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California, Laws, statutes, etc.
= Codes. Criminal
THE

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PENAL CODE

OF

CALIFORNIA.

ENACTED IN 1872; AS AMENDED UP TO AND
INCLUDING 1897.

BY

JAMES H. DEERING,

OF THE SAN FRANCISCO BAR.

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1911

SAN FRANCISCO:
BANCROFT-WHITNEY CO.

Law Publishers and Law Booksellers.

1897.

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CONSTITUTIONAL PROVISIONS.

Art. I, § 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Art. I, § 4. No person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief.

Art. I, § 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

See Const. U. S., art. 1, sec. 9, subd. 2.

Art. I, § 6. All persons shall be bailable by sufficient sureties, unless for capital offenses where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor confined in any room where criminals are actually imprisoned.

Art. I, § 7. The right of trial by jury shall be secured to all, and remain inviolate. . . . A trial by jury may be waived in all criminal cases not amounting to felony, by consent of both parties, expressed in open court.

Art. I, § 8. Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information, after examination and commitment by a magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A grand jury shall be drawn and summoned at least once a year in each county.

Art. I, § 9. Indictments found, or information laid, for publications in newspapers, shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

Art. I, § 13. In criminal prosecution in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law. The legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses, in criminal cases, other than cases of homicide, where there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

Art. I, § 16. No bill of attainder, ex post facto law, or law impairing the obligations of contracts, shall ever be passed.

Art. I, § 20. No person shall be convicted of treason, unless on the evidence of two

witnesses to the same overt act, or confession in open court.

Art. II, § 1. No person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privilege of an elector in this State.

Art. IV, § 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members elected.

Art. IV, § 18. The governor, lieutenant governor, secretary of state, controller, treasurer, attorney general, surveyor general, chief justice and associate justices of the Supreme Court, and judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit, under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide.

Art. IV, § 21. No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

Art. VI, § 1. The judicial power of the State shall be vested in the Senate, sitting as a court of impeachment, in a Supreme Court, Superior Courts, justices of the peace, and such inferior courts as the Legislature may establish in any incorporated city or town, or city and county.

Art. VI, § 4. The Supreme Court shall have appellate jurisdiction . . . in all criminal cases prosecuted by indictment or information, in a court of record, on questions of law alone. . . . Each of the justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any judge thereof.

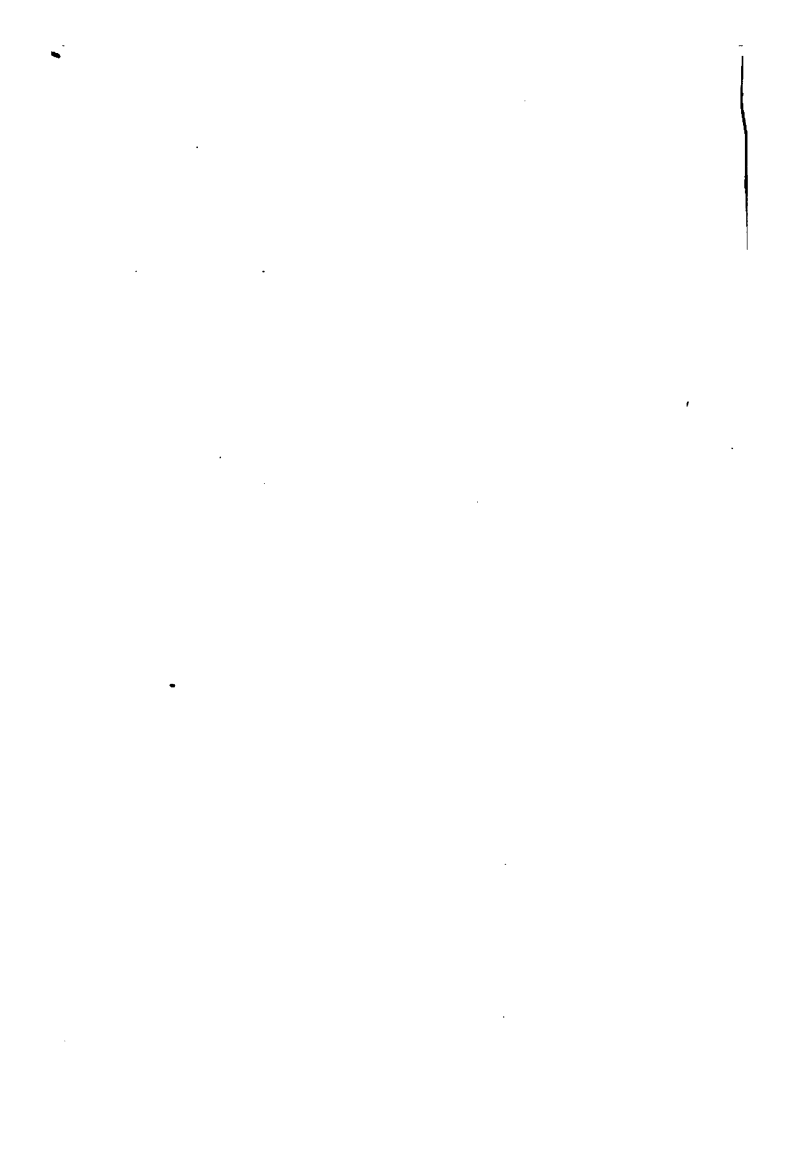
Art. VI, § 5. The Superior Courts shall have original jurisdiction . . . in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for. . . . They shall have appellate jurisdiction in such cases arising in justices' and other inferior courts in their respective counties, as may be prescribed by law. . . . Said courts, and their judges, shall have power to issue writs of habeas corpus, on petition by, or on behalf of any person in actual custody, in their respective counties.

Art. VI, § 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

Art. XX, § 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall

act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

Art. XX, § 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.



AN ACT TO ESTABLISH A PENAL CODE.

[Approved February 14th, 1872.]

**The People of the State of California, represented
in Senate and Assembly, do enact as follows:**

TITLE OF THE ACT.

§ 1. This Act shall be known as The Penal Code of California, and is divided into Three Parts, as follows:

- I.—Of Crimes and Punishments.**
- II.—Of Criminal Procedure.**
- III.—Of the State Prison and County Jails.**

This act, how cited: Sec. 24, post.

Construction of the codes, and of their various sections: See Polit. Code, secs. 4478 et seq.

PRELIMINARY PROVISIONS.

- § 2. When this act takes effect.
- § 3. Not retroactive.
- § 4. Construction of the Penal Code.
- § 5. Provisions similar to existing laws, how construed.
- § 6. Effect of Code upon past offenses.
- § 7. Certain terms defined in the senses in which they are used in this Code.
- § 8. What intent to defraud is sufficient.
- § 9. Civil remedies preserved.
- § 10. Proceedings to impeach or remove officers and others preserved.
- § 11. Authority of courts-martial preserved. Courts of justice to punish for contempts.
- § 12. Of sections declaring crimes punishable. Duty of court.
- § 13. Punishments, how determined.
- § 14. Witness' testimony may be read against him on prosecution for perjury.
- § 15. "Crime" and "public offense" defined.
- § 16. Crimes, how divided.
- § 17. Felony and misdemeanor defined.
- § 18. Punishment of felony, when not otherwise prescribed.
- § 19. Punishment of felony, when not otherwise prescribed.
- § 20. To constitute crime there must be unity of act and intent.
- § 21. Intent, how manifested, and who considered of sound mind.
- § 22. Drunkenness no excuse for crime. When it may be considered.
- § 23. Certain statutes specified as continuing in force.
- § 24. This act, how cited.

§ 2. This Code takes effect at twelve o'clock, noon, on the first day of January, eighteen hundred and seventy-three.

Effect of codes, generally: See Polit. Code, secs. 4478 et seq.

§ 3. No part of it is retroactive, unless expressly so declared.

Impairing vested rights: See Code Civ. Proc., sec. 8.

Corresponding sections.—The same section is found in each of the other three codes.

§ 4. The rule of the common law, that penal statutes are to be strictly construed, has no application to this Code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice.

Rules of construction of code provisions generally: See Polit. Code, sec. 4478 et seq.

Statutes in derogation of common law: See section 4 of each of the codes.

§ 5. The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

§ 6. No act or omission commenced after twelve o'clock, noon, of the day on which this Code takes effect as a law, is criminal or punishable, except as prescribed or authorized by this Code, or by some of the statutes which it specifies as continuing in force and as not affected by its provisions, or by some ordinance, municipal, county, or township regulation, passed or adopted under such statutes, and in force when this Code takes effect. Any act or omission commenced prior to that time may be inquired of, prosecuted, and punished in the same manner as if this Code had not been passed.

Effect on past offenses.—Where, by subsequent statute, the punishment is increased it is *ex post facto*, and inoperative: Const. U. S. art. 1, § 10, subd. 1.

§ 7. Words used in this Code in the present tense include the future as well as the present;

words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration; and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose"; signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this Code the signification attached to them in this section, unless otherwise apparent from the context:

First. The word "willfully," when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

Second. The words "neglect," "negligence," "negligent," and "negligently," import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

Third. The word "corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

Fourth. The words "malice" and "maliciously" import a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

Fifth. The word "knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of this Code. It does not require any knowledge of the unlawfulness of such act or omission.

Sixth. The word "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

Seventh. The word "vessel," when used with reference to shipping, includes ships of all kinds, steamboats, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

Eighth. The words "peace officer" signify any one of the officers mentioned in section eight hundred and seventeen of this Code.

Ninth. The word "magistrate" signifies any one of the officers mentioned in section eight hundred and eight of this Code.

Tenth. The word "property" includes both real and personal property.

Eleventh. The words "real property" are coextensive with lands, tenements, and hereditaments.

Twelfth. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

Thirteenth. The word "month" means a calendar month, unless otherwise expressed.

Fourteenth. The word "will" includes codicils.

Fifteenth. The word "writ" signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process" a writ or summons issued in the course of judicial proceedings.

Sixteenth. Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning.

Seventeenth. Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it be otherwise expressed in the act giving the authority.

Eighteenth. When the seal of a court or public officer is required by law, to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone, or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, or by the scroll of a pen, or by writing the word "seal" against his name.

Nineteenth. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words "United States" may include the District and territories. [Approved March 30, 1874; Amendments 1873-4, p. 419. In effect July 1, 1874.]

§ 8. Whenever, by any of the provisions of this Code, an intent to defraud is required in order to constitute any offense, it is sufficient if an intent appears to defraud any person, association, or body politic or corporate, whatever.

§ 9. The omission to specify or affirm in this Code any liability to damages, penalty, forfeiture, or other remedy imposed by law, and allowed to be recovered, or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

§ 10. The omission to specify or affirm in this Code any ground of forfeiture of a public office, or other trust or special authority conferred by

law, or any power conferred by law to impeach, remove, depose, or suspend any public officer or other person holding any trust, appointment, or other special authority conferred by law, does not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition, or suspension.

§ 11. This Code does not affect any power conferred by law upon any court-martial, or other military authority or officer, to impose or inflict punishment upon offenders; nor any power conferred by law upon any public body, tribunal, or officer, to impose or inflict punishment for a contempt.

§ 12. The several sections of this Code which declare certain crimes to be punishable as therein mentioned, devolve a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed.

Appointing time of pronouncing judgment: Sec. 1191, post.

Showing cause against the judgment: Sec. 1201, post.

§ 13. Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code.

§ 14. The various sections of this Code which declare that evidence obtained upon the examination of a person as a witness cannot be received against him in any criminal proceeding, do not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed in such examination.

§ 15. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

First. Death.

Second. Imprisonment.

Third. Fine.

Fourth. Removal from office; or,

Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit in this State.

Crime and public offense: See secs. 16, 17.

"The use of the terms 'crime,' 'felony,' 'misdemeanor,' and 'offense' is far from uniform even among legal writers," say the code commissioners, and after citing the definitions of several text-writers, they conclude:

"The definition of the section is based upon the usage which has grown up in this State of employing 'crime' and 'offense' in the extensive signification, and confining 'felony' and 'misdemeanor' to denote the classes into which crimes are divided, and is in substantial accord with the definitions given by Mr. Livingston: Crim. Code, art. 75."

Subd. 1. Death punishment in case of treason: See sec. 37; of murder: Sec. 190.

Subd. 4. Removal from office: See secs. 737 et seq.; Const., art. 4, secs. 18, 21; Id., art. 12, sec. 19.

Subd. 5. Disqualification to hold office: Const. Cal., art. 20, secs. 10, 11.

§ 16. Crimes are divided into:

First. Felonies; and,

Second. Misdemeanors.

See next section.

§ 17. A felony is a crime which is punishable with death, or by imprisonment in the State pris-

on. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the State prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the State prison. [Amendment approved March 7, 1874; Amendments 1873-4, p. 455.]

§ 18. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a felony is punishable by imprisonment in the State prison not exceeding five years.

§ 19. Except in cases where a different punishment is prescribed by this Code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or by both.

§ 20. In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence.

Intoxication, effect of: Sec. 22.

Insanity: Sec. 26.

§ 21. The intent or intention is manifested by the circumstances connected with the offense, and the sound mind and discretion of the accused. All persons are of sound mind who are neither idiots nor lunatics, nor affected with insanity.

Presumptions as to intention.—Conclusive presumption.—It is provided in the Code of Civil Procedure that a malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another, shall be conclusively presumed: Sec. 1962, post.

§ 22. No act committed by a person while in a state of voluntary intoxication is less criminal by reason of his having been in such condition. But, whenever the actual existence of any particular purpose, motive, or intent is a necessary element to constitute any particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive, or intent with which he committed the act.

§ 23. Nothing in this Code affects any of the provisions of the following statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the Codes, except so far as they have been repealed or affected by subsequent laws:

First. All acts incorporating or chartering municipal corporations, and acts amending or supplementing such acts.

Second. All acts consolidating cities and counties, and acts amending or supplementing such acts.

Third. All acts for funding the State debt, or any part thereof, and for issuing State bonds, and acts amending or supplementing such acts.

Fourth. All acts regulating and in relation to rhodeos.

Fifth. All acts in relation to judges of the plains.

Sixth. All acts creating or regulating boards of water commissioners and overseers in the several townships or counties of the State.

Seventh. All acts in relation to a branch State prison.

Eighth. An act for the more effectual prevention of cruelty to animals, approved March thirtieth, eighteen hundred and sixty-eight.

Ninth. An act for the suppression of Chinese

houses of ill-fame, approved March thirty-first, eighteen hundred and sixty-six.

Tenth. An act relating to the Home of the Inebriate of San Francisco, and to prescribe the powers and duties of the board of managers and the officers thereof, approved April first, eighteen hundred and seventy.

Eleventh. An act concerning marks and brands in the county of Siskiyou, approved March twentieth, eighteen hundred and sixty-six.

Twelfth. An act to prevent the destruction of fish in the waters of Bolinas Bay, in Marin county, approved March thirty-first, eighteen hundred and sixty-six.

Thirteenth. An act concerning trout in Siskiyou County, approved April second, eighteen hundred and sixty-six.

Fourteenth. An act to prevent the destruction of fish in Napa River, and Sonoma Creek, approved January twenty-ninth, eighteen hundred and sixty-eight.

Fifteenth. An act to prevent the destruction of fish and game in, upon, and around, the waters of Lake Merritt or Peralta, in the county of Alameda, approved March eighteenth, eighteen hundred and seventy.

Sixteenth. An act to regulate salmon fisheries in Eel River, in Humboldt County, approved April eighteenth, eighteen hundred and fifty-nine.

Seventeenth. An act for the better protection of stock-raisers in the counties of Fresno, Tulare, Monterey, and Mariposa, approved March twentieth, eighteen hundred and sixty-six.

Eighteenth. An act concerning oysters, approved April twenty-eight, eighteen hundred and fifty-one.

Nineteenth. An act concerning oyster-beds, approved April second, eighteen hundred and sixty-six.

Twentieth. An act concerning gas companies, approved April fourth, eighteen hundred and seventy.

See further acts in force, secs. 19, 4442, Polit. Code.

Subd. 1-6.—The acts referred to in the first six subdivisions will be found in the Political Code in the Appendix.

Subd. 7. Branch prisons: See acts in Appendix, post.

Subd. 8-20.—The act referred to in subdivision 8 will be found in Stats. 1868, 604; but see Stats. 1874, 499; in subdivision 9, see Stats. 1866, 641; but see amendments; Stats. 1874, 84; in subdivision 10, see Stats. 1870, 585; but compare Stats. 1876, 325; in subdivision 11, see Stats. 1866, 332; in subdivision 12, see Stats. 1866, 637; in subdivision 13, see Stats. 1866, 857; in subdivision 14, see Stats. 1868, 13; but see amendment, Stats. 1871, 441; in subdivision 15, see Stats. 1870, 325; in subdivision 16, see Stats. 1859, 298; in subdivision 17, see Stats. 1866, 322; in subdivision 18, see Stats. 1851, 432; but see repealing clause, Stats. 1874, 940; in subdivision 19, see Stats. 1866, 848; also see Stats. 1874, 940.

Many amendments and new sections to the Penal Code, are taken from "An act to amend the Penal Code," approved March 30, 1874; Amendments 1873-4, 419. The amendatory act contained two other sections, in reference to the effect of the new provisions, as follows:

Repealing clause, etc.

Sec. 88. All provisions of law inconsistent with the provisions of this act are repealed, except as to offenses committed before this act takes effect, and as to such offenses, and for the punishment of parties guilty thereof, the repealed provisions shall continue in force.

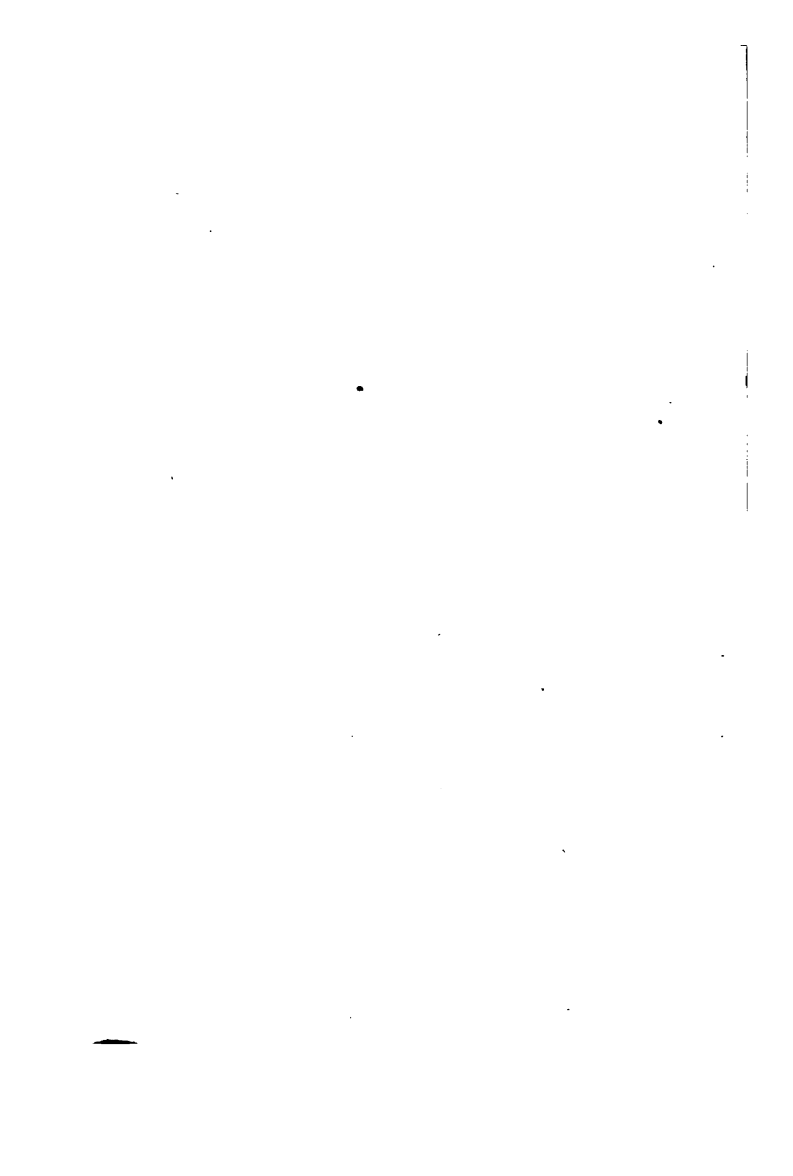
Sec. 89. This act shall take effect on the first

day of July, one thousand eight hundred and seventy-four.

§ 24. This act, whenever cited, enumerated, referred to, or amended, may be designated simply as The Penal Code, adding, when necessary, the number of the section.

This act, how cited.—The constitution nowhere uses the word "code," but speaks of the way in which an "act" may be revised or amended: Art. 4, sec. 24.

Title of the act: See ante, sec. 1.



PART I.

OF CRIMES AND PUNISHMENTS.

(§§ 26-678)



TITLE I.

OF PERSONS LIABLE TO PUNISHMENT FOR CRIME.

§ 26. Who are capable of committing crimes.

§ 27. Who are liable to punishment.

§ 26. All persons are capable of committing crimes except those belonging to the following classes:

1. Children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness;

2. Idiots;

3. Lunatics and insane persons;

4. Persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent;

5. Persons who committed the act charged without being conscious thereof;

6. Persons who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence;

7. Married women (except for felonies) acting under the threats, command, or coercion of their husbands;

8. Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe their lives would be endangered if they refused. [Approved March 30, 1874; Amendments 1873-4, p. 422. In effect July 1, 1874.]

Idiots: See post, 1367 et seq.

Acquittal on the ground of insanity: Sec. 1167.
Submitting question of sanity to a jury: Sec. 1368.

§ 27. The following persons are liable to punishment under the laws of this State:

1. All persons who commit, in whole or in part, any crime within this State;

2. All who commit larceny or robbery out of this State, and bring to, or are found with the property stolen in, this State;

3. All who, being out of this State, cause or aid, advise or encourage, another person to commit a crime within this State, and are afterwards found therein.

See sec. 778, post.

TITLE II.

OF PARTIES TO CRIME.

§ 30. Classification of parties to crime.

§ 31. Who are principals.

§ 32. Who are accessories.

§ 33. Punishment of accessories.

§ 30. The parties to crimes are classified as:

1. Principals; and,

2. Accessories.

Principals: See sec. 31.

Accessories: See sec. 32.

§ 31. All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under

the age of fourteen years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

§ 32. All persons who, after full knowledge that a felony has been committed, conceal it from the magistrate, or harbor and protect the person charged with or convicted thereof, are accessories.

§ 33. Except in cases where a different punishment is prescribed, an accessory is punishable by imprisonment in the State prison not exceeding five years, or in a county jail not exceeding two years, or by fine not exceeding five thousand dollars.

Aiding in misdemeanor is a misdemeanor: See sec. 659.

TITLE III.

OF OFFENSES AGAINST THE SOVEREIGNTY OF THE STATE.

§ 37. Treason, who only can commit.

§ 38. Misprision of treason.

§ 37. Treason against this State consists only in levying war against it, adhering to its enemies, or giving them aid and comfort, and can be committed only by persons owing allegiance to the State. The punishment of treason shall be death.

Treason against a State is an offense at common law, and is so recognized in the Constitution of the United States: See Const. U. S., art. 4, sec.

Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court: Const. Cal., sec. 20, art. 1; see, also, Const. U. S., sec. 3, art. 3; Code Civ. Proc., sec. 1968.

Owing allegiance to the State: See Polit. Code, secs. 55, 56.

§ 38. Misprision of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment in the State prison for a term not exceeding five years.

TITLE IV.

OF CRIMES AGAINST THE ELECTIVE FRANCHISE.

- § 40. Person acting as election officer without appointment.
- § 41. Violation of election laws by certain officers a felony.
- § 42. Fraudulent registration a felony.
- § 43. Refusal to be sworn or to answer board of judges.
- § 44. Refusal to obey summons of board.
- § 45. Fraudulent voting.
- § 46. Attempting to vote without being qualified.
- § 47. Procuring illegal voting.
- § 48. Changing ballots or altering returns by election officers.
- § 49. Inspectors unfolding or marking tickets.
- § 50. Forging or altering returns.
- § 51. Adding to or subtracting from votes given.
- § 52. Persons aiding and abetting.
- § 53. Intimidating, corrupting, deceiving, or defrauding electors.
- § 54. Furnishing money for elections.
- § 55. Offers to procure offices for electors.
- § 56. Communicating such offer.
- § 57. Bribing members of legislative caucuses, etc.
- § 58. Preventing public meetings.
- § 59. Disturbance of public meetings.
- § 60. Betting on elections.
- § 61. Violation of election laws by persons not officers.
- § 62. Violation of election laws as to tickets.
- § 63. No section.
- § 64. No prosecution against witness testifying in election cases.

§ 40. Any person who acts as an election officer at any election, without first having been appointed and qualified as such, and any person who, not being an election officer, performs or discharges any of the duties of an election officer, in regard to the handling or counting or canvassing of any ballots cast at any election, shall be guilty of a felony, and on conviction be punished by imprisonment in the State prison for not less than two nor more than seven years. [New sec-

tion approved March 26, 1895; Stats. 1895, p. 74. In effect March 26, 1895.]

§ 41. Every person charged with the performance of any duty, under the provision of any law of this State relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws is, unless a different punishment for such acts or omissions is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the State prison not exceeding five years, or by both.

§ 42. Every person who willfully causes, procures, or allows himself to be registered in the great register of any county, knowing himself not to be entitled to such registration, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in the county jail or State prison not exceeding one year, or by both. In all cases where, on the trial of a person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the great register of any county, without being qualified for such registration, the court must order such registration to be canceled.

Stats. 1866, 299, sec. 34.

§ 43. Every person who, after being required by the board of judges at any election, refuses to be sworn, or being sworn, refuses to answer any pertinent question, propounded by such board, touching the right of another to vote, is guilty of a misdemeanor. [Amendment approved March 30, 1874; Amendments 1873-4, p. 423. In effect July 1, 1874.]

Stats. 1866, 511, sec. 5. The amendment consisted in omitting after "touching" the words "his right or."

§ 44. Every person summoned to appear and testify before any board of registration, who willfully disobeys such summons, is guilty of a misdemeanor.

Stats. 1865, 652, sec. 15.

§ 45. Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two or more tickets, folded together, or changes any ballot after the same has been deposited in the ballot-box, or adds, or attempts to add, any ballot to those illegally polled at any election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted; or adds to, or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll-lists, or ballots, or ballot-box, for the purpose of breaking up or invalidating such election, or willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights or voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

Stats. 1855, 296, sec. 1; 1858, 165, sec. 1.

§ 46. Every person not entitled to vote, who fraudulently attempts to vote, or who, being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

Stats, 1850, 111, sec. 101.

§ 47. Every person who procures, aids, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor.

Stats. 1866, 511, sec. 8.

§ 48. Every officer or clerk of election who aids in changing or destroying any poll-list, or in placing any ballots in the ballot-box, or taking any therefrom, or adds, or attempts to add, any ballots to those legally polled at such election, either by fraudulently introducing the same into the ballot-box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with the ballots polled any other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election, or allows another to do so, when in his power to prevent it, or carries away or destroys, or knowingly allows another to carry away or destroy any poll-list, ballot-box, or ballots lawfully polled, is punishable by imprisonment in the State prison for not less than two nor more than seven years.

Stats. 1858, 165, sec. 2.

§ 49. Every inspector, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot-box, attempts to find out any name on such ballot, or who opens or suffers the folded ballot of any elector which has been handed in to be opened or examined previous to putting the same into the ballot-box, or who makes or places any mark or device on any folded ballot with the view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such inspector, judge,

or clerk, has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine, not less than fifty nor more than five hundred dollars.

Stats. 1863, 398, sec. 1.

§ 50. Every person who forges or counterfeits returns of an election purporting to have been held at a precinct, town, or ward where no election was in fact held, or willfully substitutes forged or counterfeit returns of election in the place of the true returns, for a precinct, town, or ward where an election was actually held, is punishable by imprisonment in the State prison for a term not less than two nor more than ten years.

Stats. 1863, 399, sec. 1.

§ 51. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any returns, or who alters such returns, is punishable by imprisonment in the State prison for not less than one nor more than five years.

Stats. 1863, 399, sec. 1.

§ 52. Every person who aids or abets in the commission of any of the offenses mentioned in the four preceding sections, is punishable by imprisonment in the county jail for the period of six months, or in the State prison not exceeding two years. [Approved March 30, 1874; Amendments 1873-4, p. 423. In effect July 1, 1874.]

Stats. 1863, 399, sec. 1.

§ 53. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly, attempts to influence any elector in giving his vote, or to deter him from giving the same; or attempts by any means whatever to awe, restrain, hinder, or disturb any elector in the exercise of the right of suffrage, or fur-

nishes any elector wishing to vote, who cannot read, with a ticket, informing or giving such elector to understand that it contains a name, written or printed thereon, different from the name, which is written or printed thereon, or defrauds any elector at any such election by deceiving and causing such elector to vote for a different person for any office than he intended or desired to vote for; or, who, being inspector, judge, or clerk of any election, while acting as such, induces or attempts to induce any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of felony. [Amendment approved February 23, 1893; Stats. 1893, p. 7.]

Stats. 1850, 110.

§ 54. Every person who, with intent to promote the election of himself or any other person, either—

1. Furnishes entertainment at his expense to any meeting of electors previous to or during an election;

2. Pays for, procures, or engages to pay for any such entertainment;

3. Furnishes or engages to pay or deliver any money or property for the purpose of procuring the attendance of voters at the polls, or for the purpose of compensating any person for procuring attendance of voters at the polls, except for the conveyance of voters who are sick or infirm;

4. Furnishes or engages to pay or deliver any money or property for any purpose intended to promote the election of any candidate, except for the expenses of holding and conducting public meetings for the discussion of public questions, and of printing and circulating ballots, handbills, and other papers, previous to such election;

—is guilty of a misdemeanor.

Buying appointment to office: See sec. 73.

§ 55. Every person who, being a candidate at any election, offers or agrees to appoint or procure the appointment of any particular person to office, as an inducement or consideration to any person to vote for, or procure or aid in procuring the election of such candidate, is guilty of a misdemeanor.

§ 56. Every person, not being a candidate, who communicates any offer, made in violation of the last section, to any person, with intent to induce him to vote for, or to procure or aid in procuring the election of the candidate making the offer, is guilty of a misdemeanor.

Stats. 1850, 239, secs. 84-86; 1863, 645, secs. 1-3.

§ 57. Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this State, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the State prison not less than one, nor more than fourteen years.

§ 58. Every person who, by threats, intimidations, or unlawful violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions, is guilty of a misdemeanor.

§ 59. Every person who willfully disturbs or breaks up any public meeting of electors or oth-

ers, lawfully being held for the purpose of considering public questions, is guilty of a misdemeanor.

§ 60. Every person who makes, offers, or accepts any bet or wager upon the result of any election, or upon the success or failure of any person or candidate, or upon the number of votes to be cast, either in the aggregate or for any particular candidate, or upon the vote to be cast by any person, is guilty of a misdemeanor.

§ 61. Every person who willfully violates any of the provisions of the laws of this State relating to elections is, unless a different punishment for such violation is prescribed by this Code, punishable by fine not exceeding one thousand dollars, or by imprisonment in the State prison not exceeding five years, or by both.

The election laws of the State are found in title 2 of part 3 of the Political Code, secs. 1041-1365, inclusive.

Act to prohibit piece clubs and prevent extortion from candidates: See post, Appendix, p.543.

§ 62. Every person who prints any ticket not in conformity with section one thousand one hundred and ninety-one of the Political Code, or who circulates or gives to another any ticket, knowing at the time that such ticket does not conform to the provisions of section one thousand one hundred and ninety-one of the Political Code, is guilty of a misdemeanor. [New section approved March 23, 1874; Amendments 1873-4, p. 456. In effect in sixty days.]

Act to prevent sale of intoxicants on election days: See post, Appendix, p. 580.

§ 63. No section of this number.

§ 64. No person, otherwise competent as a witness, shall be disqualified or excused from testifying concerning any of the offenses enumerated and prescribed in this title, on the ground that such testimony may criminate himself; but no prosecution can afterwards be had against such witness for any such offense concerning which he testified for the prosecution. [New section added March 20, 1891; Stats. 1891, p. 185.]

TITLE V.

OF CRIMES BY AND AGAINST THE EXECUTIVE POWER OF THE STATE.

- § 65. Acting in a public capacity without having qualified.
- § 66. Acts of officers de facto not affected.
- § 67. Giving or offering bribes to executive officers.
- § 68. Asking or receiving bribes.
- § 69. Resisting officers.
- § 70. Extortion.
- § 71. Officers illegally interested in contracts.
- § 72. Presenting fraudulent bills or claims for allowance or payment.
- § 73. Buying appointments to office.
- § 74. Taking rewards for deputation.
- § 75. Exercising functions of office wrongfully.
- § 76. Refusal to surrender books, etc., to successor.
- § 77. Sections to apply to administrative and ministerial officers.

§ 65. Every person who exercises any function of a public office without taking the oath of office, or without giving the required bond, is guilty of a misdemeanor. [Approved March 30, 1874; Amendments 1873-4, p. 423. In effect July 1, 1874.]

Oath of office.—“I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will

faithfully discharge the duties of the office of —, according to the best of my ability”: Cal Const., sec. 3, art. 20; see Polit. Code, secs. 904 et seq.

§ 66. The last section shall not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

§ 67. Every person who gives or offers any bribe to any executive officer of this State, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the State prison not less than one nor more than fourteen years, and is disqualified from holding any office in this State.

Stats. 1863, 645, secs. 1-3.

Bribery of judicial officer: See sec. 92.

Bribery of legislator: See sec. 85.

§ 68. Every executive officer, or person elected or appointed to an executive office, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the State prison not less than one nor more than fourteen years; and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this State.

Stats. 1863, 645, secs. 1-3.

§ 69. Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists,

by the use of force or violence, such officer, in the performance of his duty, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Resisting officers: See generally, sec 148.

Stats. 1860, 125, sec. 1.

§ 70. Every executive or ministerial officer who knowingly asks or receives any emolument, gratuity, or reward, or any promise thereof, excepting such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. [Approved March 30, 1874; Amendments 1873-4, p. 423. In effect July 1, 1874.]

Official extortion.—The act of 1850 defined extortion to be the willful or corrupt receiving by any officer of a reward or fee for the discharge of duty other than that allowed by law, or the act of demanding such reward or fee as a condition precedent to the performance of official duty: Stats. 1850, 242, sec. 107.

Extortion by judicial officer: See sec. 94.

§ 71. Every officer or person prohibited by the laws of this State from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, who violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the State prison not more than five years, and is forever disqualified from holding any office in this State.

§ 72. Every person who, with intent to defraud, presents for allowance or for payment to any State board or officer, or to any county, town, city, ward, or village board or officer, authorized to allow or pay the same if genuine, any false or

fraudulent claim, bill, account, voucher, or writing, is guilty of felony.

§ 73. Every person who gives or offers any gratuity or reward, in consideration that he or any other person shall be appointed to any public office, or shall be permitted to exercise or discharge the duties thereof, is guilty of a misdemeanor.

Stats. 1850, 239, sec. 85.

Constitutional provision.—Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment: Const. Cal., sec. 10, art. 20.

§ 74. Every public officer who, for any gratuity or reward, appoints another person to a public office, or permits another person to exercise or discharge any of the duties of his office, is punishable by a fine not exceeding five thousand dollars, and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this State.

Stats. 1850, 239, sec. 85.

§ 75. Every person who willfully and knowingly intrudes himself into any public office to which he has not been elected or appointed, and every person who, having been an executive officer, willfully exercises any of the functions of his office after his term has expired, and a successor has been elected or appointed and has qualified, is guilty of a misdemeanor.

Stats. 1850, 242, sec. 105.

§ 76. Every officer whose office is abolished by law, or who, after the expiration of the time for which he may be appointed or elected, or after he has resigned or been legally removed from of-

office, willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, the records, papers, documents, or other writing appertaining or belonging to his office, or mutilates, destroys, or takes away the same, is punishable by imprisonment in the State prison not less than one nor more than ten years.

Stats. 1850, 240, sec. 89.

§ 77. The various provisions of this chapter apply to administrative and ministerial officers, in the same manner as if they were mentioned therein.

TITLE VI.

OF CRIMES AGAINST THE LEGISLATIVE POWER.

- § 81. Preventing the meeting of the Legislature.
- § 82. Disturbing the Legislature while in session.
- § 83. Altering draft of bill or resolution.
- § 84. Altering enrolled copy of bill or resolution.
- § 85. Giving or offering bribes to members of the Legislature.
- § 86. Receiving bribes by members of the Legislature.
- § 87. Witnesses refusing to attend, etc., before the Legislature.
- § 88. Bribes by members of the Legislature.
- § 89. Lobbying.

§ 81. Every person who willfully, and by force or fraud, prevents the legislature of this State, or either of the houses composing it, or any of the members thereof, from meeting or organizing, is guilty of felony.

§ 82. Every person who willfully disturbs the legislature of this State, or either of the houses composing it, while in session, or who commits any disorderly conduct in the immediate view and presence of either house, tending to interrupt

its proceedings or impair the respect due to its authority, is guilty of a misdemeanor.

§ 83. Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the legislature, to be passed or adopted, with intent to procure it to be passed or adopted by either house, or certified by the presiding officer of either house, in language different from that intended by such house, is guilty of felony.

§ 84. Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the legislature of this State, with intent to procure it to be approved by the governor, or certified by the secretary of state, or printed or published by the printer of the statutes, in language different from that in which it was passed or adopted by the legislature, is guilty of felony.

§ 85. Every person who gives or offers to give a bribe to any member of the legislature, or to another person for him, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his vote, or in not attending the house or any committee of which he is a member, is punishable by imprisonment in the State prison not less than one nor more than ten years.

Stats. 1863, 45, secs. 1, 2.

Bribery: See secs. 67, 68, ante.

§ 86. Every member of either of the houses composing the legislature of this State who asks, receives, or agrees to receive any bribe, upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby,

or shall be given in any particular manner, or upon any particular side of any question or matter upon which he may be required to act in his official capacity, or gives, or offers, or promises to give any official vote in consideration that another member of the legislature shall give any such vote, either upon the same or another question, is punishable by imprisonment in the State prison not less than one nor more than fourteen years, and upon conviction thereof shall, in addition to said punishment, forfeit his office, be disfranchised, and forever disqualified from holding any office or public trust. [Amendment approved April 6, 1880; Amendments 1880, p. 7. In effect April 6, 1880.]

The amendment added all after the word "years."

The section is based upon Stats. 1863, 645, secs. 1, 2, which the code commissioners in their note say was "extended, however, to embrace what is known as 'log-rolling,' or agreements to exchange votes for or against measures pending before the legislature; and also so as to embrace deceits and concealments practiced upon members of the legislature to obtain their votes." And they conclude: "That what, in the technical vocabulary of politicians, is termed 'log-rolling,' is a misdemeanor at common law, punishable by indictment."

§ 87. Every person who, being summoned to attend as witness before either house of the legislature or any committee thereof, refuses or neglects, without lawful excuse, to attend pursuant to such summons; and every person who, being present before either house of the legislature or any committee thereof, willfully refuses to be sworn, or to answer any material and proper question, or to produce, upon reasonable notice, any material and proper books, papers, or docu-

ments in his possession or under his control, is guilty of a misdemeanor.

Stats. 1857, 97, sec. 1.

§ 88. Every member of the legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this State.

§ 89. Every person who obtains, or seeks to obtain money or other thing of value from another person, upon a pretense, claim, or representation that he can or will improperly influence in any manner the action of any member of a legislative body in regard to any vote or legislative matter, is guilty of a felony. Upon the trial no person otherwise competent as a witness shall be excused from testifying as such concerning the offense charged, on the grounds that such testimony may criminate himself, or subject him to public infamy, but such testimony shall not afterward be used against him in any judicial proceeding, except for perjury in giving such testimony. [Amendment approved April 6, 1880; Amendments 1880, p. 7. In effect April 6, 1880.]

TITLE VII.

OF CRIMES AGAINST PUBLIC JUSTICE.

Chapter I. Bribery and Corruption.

- II. Rescue.
- III. Escapes and aiding therein.
- IV. Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents.
- V. Perjury and Subornation of Perjury.
- VI. Falsifying Evidence.
- VII. Other Offenses Against Public Justice.
- VIII. Conspiracy.

CHAPTER I.

BRIBERY AND CORRUPTION.

- § 92. Giving bribes to judges, jurors, referees, etc.
- § 93. Receiving bribes by judicial officers, jurors, etc.
- § 94. Extortion.
- § 95. Improper attempts to influence jurors, referees, etc.
- § 96. Misconduct of jurors, referees, etc.
- § 97. Justice or constable purchasing judgment.
- § 98. Officers convicted of, disfranchised.
- § 99. Superintendent of printing, interest in contracts, etc.
- § 100. Superintendent of printing, collusion in furnishing materials.

§ 92. Every person who gives or offers to give a bribe to any judicial officer, juror, referee, arbitrator, or umpire, or to any person who may be authorized by law to hear or determine any question or controversy, with intent to influence his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, is punishable by imprisonment in

the State prison not less than one nor more than ten years.

Bribery of executive officers: See sec. 67.

§ 93. Every judicial officer, juror, referee, arbitrator, or umpire, and every person authorized by law to hear or determine any question or controversy, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or decision upon any matter or question which is or may be brought before him for decision, shall be influenced thereby, is punishable by imprisonment in the State prison not less than one nor more than ten years.

Stats. 1856, 220, sec. 10; 1863, 645, secs. 84-86.

§ 94. Every judicial officer who asks or receives any emolument, gratuity, or reward, or any promise thereof, except such as may be authorized by law, for doing any official act, is guilty of a misdemeanor. Every judicial officer who shall ask or receive the whole or any part of the fees allowed by law to any stenographer or reporter appointed by him, or any other person, to record the proceedings of any court or investigation held by him, shall be guilty of a misdemeanor, and upon conviction thereof shall forfeit his office. Any stenographer or reporter, appointed by any judicial officer in this State, who shall pay, or offer to pay, the whole or any part of the fees allowed him by law for his appointment or retention in office, shall be guilty of a misdemeanor, and upon conviction thereof shall be forever disqualified from holding any similar office in the courts of this State. [Amendment approved March 8, 1895; Stats. 1895, p. 30. In effect March 8, 1895.]

Stats. 1850, 229.

Extortion by executive officer: See sec. 70.

§ 95. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator, or umpire, or appointed a referee, in respect to his verdict in, or decision of any cause or proceeding, pending or about to be brought before him, either:

1. By means of any communication, oral or written, had with him except in the regular course of proceedings;

2. By means of any book, paper, or instrument exhibited, otherwise than in the regular course of proceedings;

3. By means of any threat, intimidation, persuasion, of entreaty; or,

4. By means of any promise, or assurance of any pecuniary or other advantage;

—is punishable by fine not exceeding five thousand dollars, or by imprisonment in the State prison not exceeding five years. [Approved March 30, 1874; Amendments 1873-4, p. 424. In effect July 1, 1874.]

The original was based on Stats. 1856, 220, sec. 10. The amendment added the words "or proceeding" after "cause," and omitted "upon the trial of such cause" after "proceedings," in subdivisions 1 and 2.

§ 96. Every juror, or person drawn or summoned as a juror, or chosen arbitrator or umpire, or appointed referee, who either—

1. Makes any promise or agreement to give a verdict or decision for or against any party; or,

2. Willfully and corruptly permits any communication to be made to him, or receives any book, paper, instrument or information relating to any cause or matter pending before him, except according to the regular course of proceedings;

—is punishable by fine not exceeding five thousand dollars, or by imprisonment in the State pris-

on not exceeding five years. [Approved March 30, 1874; Amendments 1873-4, p. 424. In effect July 1, 1874.]

The original was based on Stats. 1856, 220, sec. 10. The amendment omitted, after "proceedings" in subdivision 2, "upon the trial of such cause."

§ 97. Every justice of the peace or constable of the same township who purchases or is interested in the purchase of any judgment or part thereof on the docket of, or on any docket in possession of, such justice, is guilty of a misdemeanor.

§ 98. Every officer convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this State.

§ 99. The superintendent of State printing shall not, during his continuance in office, have any interest, either directly or indirectly, in any contract in any way connected with his office as superintendent of State printing; nor shall he, during said period, be interested either directly or indirectly, in any State printing, binding, engraving, lithographing, or other State work of any kind connected with his said office; nor shall he, directly or indirectly, be interested in any contract for furnishing paper, or other printing stock or material, to or for use in his said office; and any violations of these provisions shall subject him, on conviction before a court of competent jurisdiction, to imprisonment in the State prison for a term of not less than two years nor more than five years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or by both such fine and imprisonment. [Amendment approved March 27, 1895; Stats. 1895, p. 235. In effect March 27, 1895.]

§ 100. If the said superintendent of State printing shall corruptly collude with any person or persons furnishing paper or materials, or bidding therefor, or with any other person or persons, or have any secret understanding with him or them, by himself or through others, to defraud the State, or by which the State shall be defrauded or made to sustain a loss, contrary to the true intent and meaning of this act, he shall, upon conviction thereof, in any court of competent jurisdiction, forfeit his office, and be subject to imprisonment in the State prison for a term of not less than two years, and to a fine of not less than one thousand dollars nor more than three thousand dollars, or both such fine and imprisonment. [New section approved April 3, 1876: Amendments 1875-6, p. 19. In effect April 3d, 1876.]

Section 5 of an act entitled "An act to amend the Political and Penal Codes, concerning public printing, and for other purposes," approved April 3, 1876 (see Amendments 1875-6, 16), embraced sections 99 and 100 of the Penal Code. That act also amended a number of the sections of the Political Code, relating to the public printing, and the reference in section 100 is intended to be to that act, and not to the Penal Code.

See also Polit. Code, sec. 538, and the act of April 3, 1876, thereafter referred to.

CHAPTER II.

RESCUES.

§ 101. Rescuing prisoners.

§ 102. Retaking goods from custody of officer.

§ 101. Every person who rescues or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

1. If such prisoner was in custody upon a conviction of felony punishable with death; by imprisonment in the State prison not less than one nor more than fourteen years;

2. If such prisoner was in custody upon a conviction of any other felony: by imprisonment in the State prison not less than six months, nor more than five years;

3. If such prisoner was in custody upon a charge of felony: by a fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding two years.

4. If such prisoner was in custody otherwise than upon a charge of conviction of felony: by fine not exceeding five hundred dollars and imprisonment in the county jail not exceeding six months.

§ 102. Every person who willfully injures or destroys, or takes or attempts to take, or assists any person in taking or attempting to take, from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of a misdemeanor.

CHAPTER III.

ESCAPES, AND AIDING THEREIN.

- § 105. Escapes from State prison.
- § 106. Attempt to escape from State prison.
- § 107. Escapes from other than State prison.
- § 108. Officers suffering convicts to escape.
- § 109. Assisting prisoner to escape.
- § 110. Carrying into prison things useful to aid in an escape.
- § 111. Expense of trial for escape.

§ 105. Every prisoner confined in the State prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the State prison for a term equal in length to the term he was serving at the time of such escape; said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison. [Amendment approved April 16, 1880; Amendments 1880, p. 42. In effect April 16th, 1880.]

See section 109 of this Code for the punishment imposed in this State upon a person who assists a prisoner confined in any prison, or in the lawful custody of any officer or person, to escape.

Escape suffered by officers: Sec. 108.

Killing escaped prisoner is justifiable when: See sec. 196.

§ 106. Every prisoner confined in the State prison for a term less than for life, who attempts to escape from such prison, is guilty of a felony, and, on conviction thereof, the term of imprisonment therefor shall commence from the time such convict would otherwise have been discharged from said prison. [Amendment approved April 16, 1880; Amendments 1880, p. 42. In effect April 16, 1880.]

§ 107. Every prisoner confined in any other prison than the State prison, who escapes or attempts to escape therefrom, is guilty of a misdemeanor.

§ 108. Every keeper of a prison, sheriff, deputy sheriff, constable, or jailer, or person employed as a guard, who fraudulently contrives, procures, aids, connives at, or voluntarily permits the escape of any prisoner in custody, is punishable by imprisonment in the State prison not exceeding ten years, and fine not exceeding ten thousand dollars.

§ 109. Every person who willfully assists any prisoner confined in any prison, or in the lawful custody of any officer or person, to escape, or in an attempt to escape from such prison or custody, is punishable as provided in section one hundred and eight of this Code.

§ 110. Every person who carries or sends into a prison anything useful to aid a prisoner in making his escape, with intent thereby to facilitate the escape of any prisoner confined therein, is punishable as provided in section one hundred and eight of this Code.

§ 111. Whenever a trial shall be had of any person under any of the provisions of sections one hundred and five and one hundred and six of this Code, and whenever a convict in the State prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such convict, properly certified to by a superior judge of said county, which statement shall be sent to the board of State Prison Directors for their approval; and

after such approval, said board shall cause the amount of such costs to be paid out of the money appropriated for the support of the State prison, to the county treasurer of the county where such trial was had. [New section approved April 6, 1880; Amendments 1880, p. 9. In effect April 6, 1880.]

CHAPTER IV.

FORGING, STEALING, MUTILATING, AND FALSIFYING JUDICIAL AND PUBLIC RECORDS AND DOCUMENTS.

- § 113. Larceny, destruction, etc., of records by officers.
- § 114. Larceny, destruction, etc., of records by others.
- § 115. Offering false or forged instruments to be recorded.
- § 116. Adding names, etc., to jury lists.
- § 117. Falsifying jury lists, etc.

§ 113. Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person so to do, is punishable by imprisonment in the State prison not less than one nor more than fourteen years.

§ 114. Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the State prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding one hundred dollars, or by both.

§ 115. Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this State, which instrument, if genuine, might be filed, or registered, or recorded under any law of this State, or of the United States, is guilty of felony.

§ 116. Every person who adds any names to the list of persons selected to serve as jurors for the county, either by placing the same in the jury-box, or otherwise, or extracts any name therefrom, or destroys the jury-box, or any of the pieces of paper containing the names of jurors, or mutilates or defaces such names so that the same cannot be read, or changes such names on the pieces of paper, except in cases allowed by law, is guilty of a felony. [Approved March 30, 1874; Amendments 1873-4, p. 425. In effect July 1, 1874.

§ 117. Every officer or person required by law to certify to the list of persons selected as jurors, who maliciously, corruptly, or willfully certifies to a false or incorrect list, or a list containing other names than those selected, or who, being required by law to write down the names placed on the certified lists on separate pieces of paper, does not write down and place in the jury-box the same names that are on the certified list, and no more and no less than are on such lists, is guilty of a felony.

CHAPTER V.

PERJURY AND SUBORNATION OF PERJURY.

- § 118. Perjury defined.
- § 119. Oath defined.
- § 120. Oath of office.
- § 121. Irregularity in administering.
- § 122. Incompetency of witness no defense.
- § 123. Knowledge of materiality of testimony not necessary.
- § 124. Making depositions, etc., when deemed complete.
- § 125. Statement of that which one does not know to be true.
- § 126. Punishment of perjury.
- § 127. Subornation of perjury.
- § 128. Procuring the execution of innocent persons.

§ 118. Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath states as true any material matter which he knows to be false, is guilty of perjury.

See sec. 121 as to oaths administered in an irregular manner.

§ 119. The term "oath," as used in the last section, includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.

Manner of administering oath.—That mode of swearing which the witness believes most obligatory may be adopted. No special form of oath or affirmation is required: Code Civ. Proc., secs. 2093-2097; see also sec. 121, post.

§ 120. So much of an oath of office as relates to the future performance of official duties is not such an oath as is intended by the two preceding sections.

Oath of office: See Polit. Code, secs. 904 et seq.

§ 121. It is no defense to a prosecution for perjury that the oath was administered or taken in an irregular manner.

§ 122. It is no defense to a prosecution for perjury that the accused was not competent to give the testimony, deposition, or certificate of which falsehood is alleged. It is sufficient that he did give such testimony or make such deposition or certificate.

§ 123. It is no defense to a prosecution for perjury that the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made. It is sufficient that it was material, and might have been used to affect such proceeding.

§ 124. The making of a deposition or certificate is deemed to be complete, within the provisions of this chapter, from the time when it is delivered by the accused to any other person, with the intent that it be uttered or published as true.

§ 125. An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false.

§ 126. Perjury is punishable by imprisonment in the State prison not less than one, nor more than fourteen years.

§ 127. Every person who willfully procures another person to commit perjury is guilty of sub-

ornation of perjury, and is punishable in the same manner as he would be if personally guilty of the perjury so procured.

§ 128. Every person who, by willful perjury, or subornation of perjury, procures the conviction and execution of an innocent person, is punishable by death.

CHAPTER VI.

FALSIFYING EVIDENCE.

- § 132. Offering false evidence.
- § 133. Deceiving a witness.
- § 134. Preparing false evidence.
- § 135. Destroying evidence.
- § 136. Preventing or dissuading witness from attending.
- § 137. Bribing witnesses.
- § 138. Receiving or offering to receive bribes.

§ 132. Every person who, upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged, or fraudulently altered or antedated, is guilty of felony.

§ 133. Every person who practices any fraud or deceit or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness, or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

§ 134. Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent

to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

§ 135. Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

§ 136. Every person who willfully prevents or dissuades any person who is or may become a witness, from attending upon any trial, proceeding, or inquiry, authorized by law, is guilty of a misdemeanor.

§ 137. Every person who gives, or offers, or promises to give, to any witness, or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any person to give false or withhold true testimony, is guilty of a felony. [Approved March 30, 1874; Amendments 1873-4, p. 425. In effect July 1, 1874.]

§ 138. Every person who is a witness, or is about to be called as such, who receives or offers to receive, any bribe, upon any understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial or proceeding upon which his testimony is required, is guilty of a felony. [Approved March 30, 1874; Amendments 1873-4, p. 425. In effect July 1, 1874.]

CHAPTER VII.

OTHER OFFENSES AGAINST PUBLIC JUSTICE.

- § 142. Officer refusing to arrest parties charged with crime.
- § 143. Public administrator, neglect or violation of duty by.
- § 144. Receiving fee for services in arresting fugitives.
- § 145. Delaying to take person arrested before a magistrate.
- § 146. Making arrests, etc., without lawful authority.
- § 147. Inhumanity to prisoners.
- § 148. Resisting public officers in the discharge of their duties.
- § 149. Assault, etc., by officers, under color of authority.
- § 150. Refusing to aid officers in arrest, etc.
- § 151. Taking extra-judicial oaths.
- § 152. Administering extra-judicial oaths.
- § 153. Compounding crimes.
- § 154. Debtor fraudulently concealing his property.
- § 155. Defendant fraudulently concealing his property.
- § 156. Fraudulent pretenses relative to birth of infant.
- § 157. Substituting one child for another.
- § 158. Common barratry defined. How punished.
- § 159. What proof is required.
- § 160. Misconduct by attorneys.
- § 161. Buying demands or suit by an attorney.
- § 162. Attorneys forbidden to defend prosecutions carried on by their partners or formerly by themselves.
- § 163. Limitation of preceding section.
- § 164. Grand juror acting after challenge has been allowed.
- § 165. Bribing boards of supervisors, etc.
- § 166. Criminal contempts.
- § 167. False certificates by public officers.
- § 168. Disclosing fact of indictment having been found.
- § 169. Disclosing what transpired before the grand jury.
- § 170. Maliciously procuring search warrant.
- § 171. Unauthorized communication with convict.
- § 172. Keeping liquor within two miles of State prison.
- § 173. Importing foreign convicts.
- § 174. Bringing Chinese into the State.
- § 175. Separate and distinct prosecution.
- § 176. Omission of duty by public officer.
- § 177. Offense for which no penalty is prescribed.
- § 178. Officers of corporations not to employ Chinese.
- § 179. Corporations not to employ Chinese.
- § 180. County treasurer receiving money from private source.

§ 142. Every sheriff, coroner, keeper of a jail, constable, or other peace officer, who willfully refuses to receive or arrest any person charged with a criminal offense, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

§ 143. Every person holding the office of public administrator, who willfully refuses or neglects to perform the duties thereof, or who violates any provision of law relating to his duties or the duties of his office, for which some other punishment is not prescribed, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding two years or both.

Stats. 1851, 488, sec. 303.

§ 144. Every person who violates any of the provisions of section one thousand five hundred and fifty-eight is guilty of a misdemeanor.

The section referred to relates to fees or compensation allowed persons for pursuing and securing the extradition of fugitives from justice.

§ 145. Every public officer or other person having arrested any person upon a criminal charge, who willfully delays to take such person before a magistrate having jurisdiction, to take his examination, is guilty of a misdemeanor.

§ 146. Every public officer, or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses any one of any lands or tenements, without a regular process or other lawful authority therefor, is guilty of a misdemeanor.

§ 147. Every officer who is guilty of willful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office.

§ 148. Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

Resisting officers: Sec. 69.

§ 149. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding five years.

§ 150. Every male person above eighteen years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or by neglecting to aid and assist in retaking any person who after being arrested or confined, may have escaped from such arrest or imprisonment, or by neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of any criminal offense, being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, is punishable by fine of not less than fifty nor more than one thousand dollars.

Act to authorize supervisors to pay expenses of posse comitatus: See post, Appendix.

§§ 151, 152. Administering and taking oath, when a misdemeanor.

Sections 151 and 152 were repealed by act approved March 30, 1874; Amendments 1873-4, 425; took effect July 1, 1874.

§ 153. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement or promise thereof, upon any agreement or understanding to compound or conceal such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in the State prison not exceeding five years, or in a county jail not exceeding one year, where the crime was punishable by death or imprisonment in the State prison for life.

2. By imprisonment in the State prison not exceeding three years, or in the county jail not exceeding six months, where the crime was punishable by imprisonment in the State prison for any other term than for life.

3. By imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, where the crime was a misdemeanor.

Compromising certain offenses: See secs. 1377-1379.

§ 154. Every debtor who fraudulently removes his property or effects out of this State, or fraudulently sells, conveys, assigns, or conceals his property, with intent to defraud, hinder, or delay his creditors of their rights, claims or demands, is punishable by imprisonment in the county jail

not exceeding one year, or by fine not exceeding five thousand dollars, or by both.

§ 155. Every person against whom an action is pending or against whom a judgment has been rendered for the recovery of any personal property, who fraudulently conceals, sells, or disposes of such property, with intent to hinder, delay, or defraud the person bringing such action or recovering such judgment, or with such intent removes such property beyond the limits of the county in which it may be at the time of the commencement of such action or the rendering of such judgment, is punishable as provided in the preceding section.

§ 156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any person lawfully entitled thereto, is punishable by imprisonment in the State prison not exceeding ten years.

§ 157. Every person to whom an infant has been confided for nursing, education, or any other purpose, who, with intent to deceive any parent or guardian of such child, substitutes or produces to such parent or guardian another child in the place of the one so confided, is punishable by imprisonment in the State prison not exceeding seven years.

§ 158. Common barratry is the practice of exciting groundless judicial proceedings, and is punishable by imprisonment in the county jail not exceeding six months, and by fine not exceeding five hundred dollars.

§ 159. No person can be convicted of common barratry except upon proof that he has excited suits or proceedings at law in at least three instances, and with a corrupt or malicious intent to vex and annoy.

§ 159½. Whoever advertises, prints, publishes, distributes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure or obtain, or to aid in procuring or obtaining, any divorce, or the severance, dissolution, or nullity of any marriage, or offering to engage or appear or act as attorney, counsel, or referee in any suit for alimony or divorce, or the severance, dissolution, or nullity of any marriage, either in this State or elsewhere, shall be guilty of a misdemeanor. This act shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this State. [Amendment approved February 27, 1893; Stats. 1893, p. 48. In effect immediately.]

This section was first introduced at the session of 1891 (Stats. 1891, p. 279). As then introduced it read as follows:

Whoever advertises, prints, publishes, or circulates, or causes to be advertised, printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind offering to procure, or to aid in procuring any divorce, either in this State or elsewhere, shall be guilty of a misdemeanor. This act shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this State.

§ 160. Every attorney who, whether as attorney or as counsellor, either—

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Willfully delays his client's suit with a view to his own gain; or,

3. Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for;

—is guilty of a misdemeanor.

Disbarring attorneys: See sec. 287, Code Civ. Proc.

§ 161. Every attorney who, either directly or indirectly, buys, or is interested in buying, any evidence of debt or thing in action, with intent to bring suit thereon, is guilty of a misdemeanor.

§ 162. Every attorney who, directly or indirectly, advises in relation to, or aids, or promotes the defense of any action or proceeding in any court, the prosecution of which is carried on, aided, or promoted by any person as district attorney, or other public prosecutor, with whom such person is directly or indirectly connected as a partner, or who, having himself prosecuted, or in any manner aided or promoted any action or proceeding in any court as district attorney or other public prosecutor, afterwards, directly or indirectly, advises in relation to, or takes any part in, the defense thereof, as attorney or otherwise, or who takes or receives any valuable consideration from or on behalf of any defendant in any such action, upon any understanding or agreement whatever having relation to the defense thereof, is guilty of a misdemeanor, and in addition to the punishment prescribed therefor, forfeits his license to practice law.

§ 163. The preceding section does not prohibit an attorney from defending himself in person, as attorney or counsel, when prosecuted, either civilly or criminally.

§ 164. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, is present at, or takes part, or attempts to take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon, is guilty of a misdemeanor.

§ 165. Every person who gives or offers a bribe to any member of any common council, board of supervisors, or board of trustees of any county, city, or corporation, with intent to corruptly influence such member in his action on any matter or subject pending before the body of which he is a member, and every member of either of the bodies mentioned in this section who receives or offers to receive any such bribe, is punishable by imprisonment in the State prison for a term not less than one nor more than fourteen years, and is disqualified from holding any office in this State.

Stats. 1863, 645, secs. 1, 2.

§ 166. Every person guilty of any contempt of court of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

2. Behavior of the like character committed in the presence of any referee, while actually en-

gaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

4. Willful disobedience of any process or order lawfully issued by any court.

5. Resistance willfully offered by any person to the lawful order or process of any court.

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

7. The publication of a false or grossly inaccurate report of the proceedings of any court.

8. Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of such court, any affidavit, or testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this Code.

Contempt punishable as a crime: Sec. 657.

Contempts.—Power of court to punish: Code Civ. Proc. secs. 128, 177, 178.

§ 167. Every public officer authorized by law to make or give any certificate or other writing, who makes and delivers as true any such certificate or writing, containing statements which he knows to be false, is guilty of a misdemeanor.

§ 168. Every grand juror, district attorney, clerk, judge, or other officer who, except by issuing or in executing a warrant of arrest, willfully discloses the fact of a presentment or indictment

having been made for a felony, until the defendant has been arrested, is guilty of a misdemeanor.

§ 169. Every grand juror who, except when required by a court, willfully discloses any evidence adduced before the grand jury, or anything which he himself, or any other member of the grand jury, may have said, or in what manner he or any other grand juror may have voted on a matter before them, is guilty of a misdemeanor.

§ 170. Every person who maliciously and without probable cause procures a search warrant or warrant of arrest to be issued and executed, is guilty of a misdemeanor.

§ 171. Every person, not authorized by law, who, without the consent of the warden, or other officer in charge of the State prison, communicates with any convict therein, or brings into or conveys out of the State prison any letter or writing to or from any convict, is guilty of a misdemeanor.

§ 172. Every person who, within two miles of the land belonging to this State, upon which the State prison is situated, or within one mile of the insane asylum at Napa, or within one mile of the grounds belonging and adjacent to the University of California in Alameda county, or in the State capitol, or within the limits of the grounds adjacent and belonging thereto, sells, gives away, or exposes for sale, any vinous or alcoholic liquors, is guilty of a misdemeanor. [Amendment approved April 3, 1876; Amendments 1875-6, p. 109. In effect April 3, 1876.]

Act to prevent sale of liquors near Soldiers' Home: See post, Appendix, p. 579.

Act to prohibit sale of intoxicants in State capitol: See post, Appendix, p. 581.

Act to prohibit sale of intoxicants near State University: See post, Appendix, p. 581.

§ 173. Every captain, master of a vessel, or other person, who willfully imports, brings, or sends, or causes or procures to be brought or sent into this State, any person who is a foreign convict of any crime which, if committed within this State, would be punishable therein, (treason and misprision of treason excepted) or who is delivered or sent to him from any prison or place of confinement in any place without this State, is guilty of a misdemeanor.

Based upon the act of 1850 in relation to the importation of convicts: Stats. 1850, 202, secs. 1, 2.

§ 174. Every person bringing to or landing within this State any person born either in the empire of China or Japan, or the islands adjacent to the empire of China, without first presenting to the commissioner of immigration evidence satisfactory to such commissioner that such person desires voluntarily to come into this State, and is a person of good character, and obtaining from such commissioner a permit describing such person and authorizing the landing, is punishable by a fine of not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than two nor more than twelve months.

§ 175. Every individual person of the classes referred to in the two preceding sections, brought to or landed within this State contrary to the provisions of such sections, renders the person bringing or landing liable to a separate prosecution and penalty.

§ 176. Every willful omission to perform any duty enjoined by law upon any public officer, or

person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

§ 177. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. [Amendment approved March 30, 1874; Amendments 1873-4, p. 426. In effect July 1, 1874.]

§ 178. Any officer, director, manager, member, stockholder, clerk, agent, servant, attorney, employee, assignee, or contractor of any corporation now existing or hereafter formed under the laws of this State, who shall employ, in any manner or capacity, upon any work or business of such corporation any Chinese or Mongolian, is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail of not less than fifty nor more than five hundred days, or by both such fine and imprisonment; provided, that no director of a corporation shall be deemed guilty under this section who refuses to assent to such employment, and has such dissent recorded in the minutes of the board of directors.

1. Every person who, having been convicted for violating the provisions of this section, commits any subsequent violation thereof after such conviction, is punishable as follows:

2. For each subsequent conviction, such person shall be fined not less than five hundred nor more than five thousand dollars, or by imprisonment not less than two hundred and fifty days nor more than two years, or by both such fine and

imprisonment. [New section approved February 13, 1880; Amendments 1880, p. 1. In effect February 13, 1880.]

§ 179. Any corporation now existing, or hereafter formed under the laws of this State, that shall employ, directly or indirectly, in any capacity, any Chinese or Mongolian, shall be guilty of a misdemeanor, and upon conviction thereof shall for the first offense be fined not less than five hundred nor more than five thousand dollars, and upon the second conviction shall, in addition to said penalty, forfeit its charter and franchise, and all its corporate rights and privileges, and it shall be the duty of the Attorney General to take the necessary steps to enforce such forfeiture. [Amendment approved February 13, 1880; Amendments 1880, p. 2. In effect February 13, 1880.]

§ 180. Any county treasurer who shall accept, or allow, any deposit in the county treasury of moneys, from any private and unofficial source, is guilty of misdemeanor, and shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or by a fine of not less than five hundred dollars and not more than five thousand dollars, or both such fine and imprisonment in the discretion of the court, and, in addition thereto, shall forfeit his office. [New section added March 3, 1897; Stats. 1897, c. 63. In effect immediately.]

CHAPTER VIII.

CONSPIRACY.

- § 182. Criminal conspiracy defined and punishment fixed.
- § 183. No other conspiracies punishable criminally.
- § 184. Overt act, when necessary.
- § 185. Wearing mask or disguise.

§ 182. If two or more persons conspire—

1. To commit any crime;
2. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime;
3. Falsely to move or maintain any suit, action, or proceeding;
4. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses; or,
5. To commit any act injurious to the public health, to public morals, or for the perversion or obstruction of justice or due administration of the laws;

—they are punishable by imprisonment in the county jail not exceeding one year or by fine not exceeding one thousand dollars, or both. [Amendment approved March 30, 1874; Amendments 1873-4, p. 426. In effect July 1, 1874.]

See sec. 1104.

§ 183. No conspiracies, other than those enumerated in the preceding section, are punishable criminally.

§ 184. No agreement, except to commit a felony upon the person of another, or to commit arson, or burglary, amounts to a conspiracy, unless some act, beside such agreement, be done to ef-

fect the object thereof, by one or more of the parties to such agreement.

§ 185. It shall be unlawful for any person to wear any mask, false whiskers, or any personal disguise (whether complete or partial) for the purpose of--

1. Evading or escaping discovery, recognition, or identification in the commission of any public offense;

2. Concealment, flight, or escape, when charged with, arrested for, or convicted of, any public offense. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. [New section approved March 30, 1874; Amendments 1873-4, p. 426. In effect July 1, 1874.]

TITLE VIII.

OF CRIMES AGAINST THE PERSON.

Chapter I. Homicide.

- II. Mayhem.
- III. Kidnapping.
- IV. Robbery.
- V. Attempts to Kill.
- VI. Assaults with Intent to Commit Felony, other than Assaults with Intent to Murder.
- VII. Duels and Challenges.
- VIII. False Imprisonment.
- IX. Assault and Battery.
- X. Libel.

CHAPTER I.

HOMICIDE.

- § 187. Murder defined.
- § 188. Malice defined.
- § 189. Degrees of murder.
- § 190. Punishment of murder.
- § 191. Petit treason abolished.
- § 192. Manslaughter—voluntary and involuntary.
- § 193. Punishment of manslaughter.
- § 194. Deceased must die within a year and a day.
- § 195. Excusable homicide.
- § 196. Justifiable homicide by public officers.
- § 197. Justifiable homicide by other persons.
- § 198. Bare fear not to justify killing.
- § 199. Justifiable and excusable homicide not punishable.

§ 187. Murder is the unlawful killing of a human being, with malice aforethought.

Degrees of murder: Sec. 189.

§ 188. Such malice may be express or implied. It is express when there is manifested a deliber-

ate intention unlawfully to take away the life of a fellow-creature. It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.

Malice express or implied: See ante, sec. 7, subd. 4.

Origin of Section.—The Code Commissioners say that this section is based upon section 20 of the act of 1850, 231, and part of section 21 of the same act as amended in 1856, 219.

§ 189. All murder which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate, and pre-meditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, or mayhem, is murder of the first degree; and all other kinds of murders are of the second degree. [Amendment approved March 30, 1874; Amendments 1873-4, p. 427. In effect July 1, 1874.]

The indictment: See sec. 959.

Burden of proving justification or excuse: See sec. 1105, post.

§ 190. Every person guilty of murder in the first degree, shall suffer death or confinement in the State prison for life, at the discretion of the jury trying the same; or upon a plea of guilty, the court shall determine the same; and every person guilty of murder in the second degree, is punishable by imprisonment in the State prison not less than ten years. [Amendment approved March 28, 1874; Amendments 1873-4, p. 457. In effect March 28, 1874.]

Death penalty, how executed.—Whenever, in a proper case, the judgment of the court directs the

death of the defendant, the punishment in this State is inflicted, "by hanging the defendant by the neck until he is dead": See secs. 1228, 1229.

§ 191. The rules of the common law, distinguishing the killing of a master by his servant, and of a husband by his wife, as petit treason, are abolished, and these offenses are homicides, punishable in the manner prescribed by this chapter.

§ 192. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds:

1. Voluntary—upon a sudden quarrel or heat of passion.

2. Involuntary—in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

§ 193. Manslaughter is punishable by imprisonment in the State prison not exceeding ten years.

§ 194. To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; in the computation of which the whole of the day on which the act was done shall be reckoned the first.

§ 195. Homicide is excusable in the following cases:

1. When committed by accident and misfortune, in lawfully correcting a child or servant, or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, when no undue advantage is taken, nor any dangerous weapon used, and when the killing is not done in a cruel or unusual manner.

Burden of proving homicide excusable: Sec. 1105, post.

§ 196. Homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either—

1. In obedience to any judgment of a competent court; or,

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Subd. 3. Retaking escaped prisoners.—As to escapes: See sec. 105.

Burden of proving homicide justifiable: Sec. 1105, post.

§ 197. Homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tu-

multuous manner, to enter the habitation of another for the purpose of offering violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony, or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mortal combat must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or,

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Burden of proving homicide justifiable: Sec. 1105, post.

Defense of habitation: See sec. 198.

Lawful resistances, by whom and when may be made: See secs. 692-694, post.

Subd. 4. Duty to assist in arrest of felon: See sec. 837, post.

§ 198. A bare fear of the commission of any of the offenses mentioned in subdivisions two and three of the preceding section, to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person, and the party killing must have acted under the influence of such fears alone.

§ 199. The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

CHAPTER II.

MAYHEM.

§ 203. Mayhem defined.

§ 204. Mayhem, how punishable.

§ 203. Every person who unlawfully and maliciously deprives a human being of a member of his body, or disables, disfigures, or renders it useless, or cuts or disables the tongue, or puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem. [Amendment approved March 30, 1874; Amendments 1873-4, p. 427. In effect July 1, 1874.]

§ 204. Mayhem is punishable by imprisonment in the State prison not exceeding fourteen years.

CHAPTER III.

KIDNAPPING.

§ 207. Kidnapping defined.

§ 208. Punishment of kidnapping.

§ 207. Every person who forcibly steals, takes, or arrests any person in this State, and carries him into another country, State, or county, or who forcibly takes or arrests any person, with a design to take him out of this State, without having established a claim, according to the laws of the United States, or of this State, or who hires, persuades, entices, decoys, or seduces by false promises, misrepresentations, or the like, any person to go out of this State, or to be taken or removed therefrom, for the purpose and with the intent to sell such person into slavery or involun-

tary servitude, or otherwise to employ him for his own use, or to the use of another, without the free will and consent of such persuaded person, is guilty of kidnapping.

§ 208. Kidnapping is punishable by imprisonment in the State prison not less than one nor more than ten years.

CHAPTER IV.

ROBBERY.

§ 211. Robbery defined.

§ 212. What fear may be an element in robbery.

§ 213. Punishment of robbery.

§ 211. Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence and against his will, accomplished by means of force or fear.

§ 212. The fear mentioned in the last section may be either—

1. The fear of an unlawful injury to the person or property of the person robbed, or of any relative of his, or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of any one in the company of the person robbed at the time of the robbery. [Amendment approved March 30, 1874. Amendments 1873-4, p. 427. In effect July 1, 1874.]

§ 213. Robbery is punishable by imprisonment in the State prison not less than one year.

CHAPTER V.

ATTEMPTS TO KILL.

§ 216. Administering poison.

§ 217. Assault with intent to commit murder.

§ 218. Train-wrecking, punishment for.

§ 216. Every person who, with intent to kill, administers, or causes or procures to be administered, to another, any poison or other noxious or destructive substance or liquid, but by which death is not caused, is punishable by imprisonment in the State prison not less than ten years.

Stats. 1861, 588, sec. 1.

Administering stupefying drugs: Sec. 222.

§ 217. Every person who assaults another, with intent to commit murder, is punishable by imprisonment in the State prison not less than one nor more than fourteen years.

Stats. 1855, 105, sec. 2.

Assault with intent to commit other felonies: Sec. 221.

Assault with deadly weapon: Sec. 245.

§ 218. Every person who shall unlawfully throw out a switch, remove a rail, or place any obstruction on any railroad in the State of California, with the intention of derailing any passenger, freight or other train, or who shall unlawfully board any passenger train with the intention of robbing the same, or who shall unlawfully place any dynamite or other explosive material, or any other obstruction, on the track of any railroad in the State of California, with the intention of blowing up or derailing any passenger, freight, or other train, or who shall unlawfully set fire to any

railroad bridge, or trestle over which any passenger, freight, or other train must pass, with the intent of wrecking said train, upon conviction shall be adjudged guilty of felony, and shall be punished with death or imprisonment in the State prison for life, at the option of the jury trying the case. [New section added March 31, 1891; Stats. 1891, p. 283. In effect immediately.]

CHAPTER VI.

ASSAULTS WITH INTENT TO COMMIT FELONY, OTHER THAN ASSAULTS WITH INTENT TO MURDER.

§ 220. Assault with intent to commit rape.

§ 221. Other assaults.

§ 222. Administering stupefying drugs.

§ 220. Every person who assaults another with intent to commit rape, the infamous crime against nature, mayhem, robbery, or grand larceny, is punishable by imprisonment in the State prison, not less than one nor more than fourteen years.

Stats. 1855, 105, sec. 2.

Rape: See sec. 261.

§ 221. Every person who is guilty of an assault, with intent to commit any felony, except an assault with intent to commit murder, the punishment for which assault is not prescribed by the preceding section, is punishable by imprisonment in the State prison not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both.

Assault generally: Sec. 240.

Assault to murder: Sec. 217.

Assault to commit rape: Sec. 220.

Assault with deadly weapon: Sec. 240.

§ 222. Every person guilty of administering to another any chloroform, ether, laudanum, or other narcotic, anaesthetic, or intoxicating agent, with intent thereby to enable or assist himself or any other person to commit a felony, is guilty of felony.

Administering poison: Sec. 216.

CHAPTER VII.

DUELS AND CHALLENGES.

§ 225. Duel defined.

§ 226. Punishment for fighting a duel, when death ensues.

§ 227. Punishment for fighting a duel, although death does not ensue.

§ 228. Persons fighting duels, etc., disqualified from holding office, etc.

§ 229. Posting for not fighting.

§ 230. Duties of officers to prevent duels.

§ 231. Leaving the State with intent to evade laws against dueling.

§ 232. Witness' privilege.

§ 225. A duel is any combat with deadly weapons, fought between two or more persons by previous agreement or upon a previous quarrel.

§ 226. Every person guilty of fighting any duel, from which death ensues within a year and a day, is punishable by imprisonment in the State prison not less than one nor more than seven years.

§ 227. Every person who fights a duel, or who sends or accepts a challenge to fight a duel, is punishable by imprisonment in the State prison or in a county jail not exceeding one year. [Amendment approved March 30, 1874; Amendments 1873-4, p. 428. In effect July 1, 1874.]

§ 228. Any citizen of this State who shall fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage, and shall be declared so disqualified in the judgment upon conviction. [Amendment approved April 6, 1880; Amendments 1880, p. 8. In effect April 6, 1880.]

Disqualifications: See Const. Cal. art. xx., sec. 2.
Remedies by action for injuries arising from dueling: See Civ. Code, secs. 3347, 3348.

§ 229. Every person who posts or publishes another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, or who uses any reproachful or contemptuous language, verbal, written, or printed, to or concerning another, for not sending or accepting a challenge to fight a duel, or with intent to provoke a duel, is guilty of a misdemeanor.

§ 230. Every judge, justice of the peace, sheriff, or other officer bound to preserve the public peace, who has knowledge of the intention on the part of any persons to fight a duel, and who does not exert his official authority to arrest the party and prevent the duel, is punishable by fine not exceeding one thousand dollars.

§ 231. Every person who leaves this State with intent to evade any of the provisions of this chapter, and to commit any act out of this State such as is prohibited by this chapter, and who does any act, although out of this State, which would be punishable by such provisions if committed within this State, is punishable in the same manner as

he would have been in case such act had been committed within this State.

§ 232. No person shall be excused from testifying or answering any question upon any investigation or trial for a violation of either of the provisions of this chapter, upon the ground that his testimony might tend to convict him of a crime. But no evidence given upon any examination of a person so testifying shall be received against him in any criminal prosecution or proceeding.

CHAPTER VIII.

FALSE IMPRISONMENT.

§ 233. False imprisonment defined.

§ 237. False imprisonment, how punished.

§ 236. False imprisonment is the unlawful violation of the personal liberty of another.

Reconfining person discharged on habeas corpus: Sec. 363, post.

§ 237. False imprisonment is punishable by fine not exceeding five thousand dollars, or by imprisonment in the county jail not more than one year, or both.

CHAPTER IX.

ASSAULT AND BATTERY.

§ 240. Assault defined.

§ 241. Assault, how punished.

§ 242. Battery defined.

§ 243. Battery, how punished.

§ 244. Assaults with caustic chemicals.

§ 245. Assaults with deadly weapons.

§ 240. An assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

§ 241. An assault is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months.

Assault with deadly weapon: Sec. 245.

Assault with intent to commit crime against nature: Sec. 220.

Assault with intent to rob: See sec. 220.

§ 242. A battery is any willful and unlawful use of force or violence upon the person of another.

Battery.—The definition here given of battery is substantially the same as that given to the crime of assault and battery by the act concerning crimes and punishments, passed April 16, 1850, Stats. 1850, 234, sec. 51. As defined in that section, "assault and battery is the unlawful beating of another."

§ 243. A battery is punishable by fine of not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both. [Amendment approved February 26, 1881; Stats. 1881, p. 11.]

§ 244. Every person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of such person, is punishable by imprisonment in the State prison not less than one nor more than fourteen years.

§ 245. Every person who commits an assault upon the person of another with a deadly weapon or instrument, or by any means or force likely to produce great bodily injury, is punishable by imprisonment in the State prison, or in a county

jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both. [Amendment approved March 30, 1874; Amendments 1873-4, p. 428. In effect July 1, 1874.]

CHAPTER X.

LIBEL.

- § 248. Libel defined.
- § 249. Punishment of libel.
- § 250. Malice presumed.
- § 251. Truth may be given in evidence. Jury to determine law and fact.
- § 252. Publication defined.
- § 253. Liability of editors and publishers.
- § 254. Publishing a true report of public official proceedings privileged.
- § 255. Extent of privilege.
- § 256. Other privileged communications.
- § 257. Threatening to publish libel. Offer to prevent publication, with intent to extort money.

§ 248. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt, or ridicule. [Amendment approved March 30, 1874; Amendments 1873-4, p. 428. In effect July 1, 1874.]

Libel defined: See Civ. Code, sec. 45.

§ 249. Every person who willfully and with a malicious intent to injure another, publishes, or procures to be published, any libel, is punishable by fine not exceeding five thousand dollars, or imprisonment in the county jail not exceeding one year.

§ 250. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Malice defined: See sec. 7, subd. 4.

§ 251. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it appears to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. The jury have the right to determine the law and the fact.

Constitutional provision is the same: Sec. 9, art. 1.

§ 252. To sustain a charge of publishing a libel, it is not needful that the words or things complained of should have been read or seen by another. It is enough that the accused knowingly parted with the immediate custody of the libel, under circumstances which exposed it to be read or seen by any other person than himself.

§ 253. Each author, editor, and proprietor of any book, newspaper, or serial publication, is chargeable with the publication of any words contained in any part of such book, or number of such newspaper or serial.

See Const. Cal. art. I, sec. 9.

§ 254. No reporter, editor, or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.

§ 255. Libelous remarks or comments connected with matter privileged by the last section receive no privilege by reason of their being so connected.

§ 256. A communication made to a person interested in the communication, by one who was also interested, or who stood in such relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

§ 257. Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of such person, or member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, is guilty of a misdemeanor.

TITLE IX.

OF CRIMES AGAINST THE PERSON AND AGAINST
PUBLIC DECENCY AND GOOD MORALS.

Chapter I. Rape, Abduction, Carnal Abuse of
Children, and Seduction, §§ 261-7.

II. Abandonment, and Neglect of Children, §§ 270-2.

III. Abortions, §§ 274-5.

IV. Child-stealing, § 278.

V. Bigamy, Incest, and the Crime
against Nature, §§ 281-7.

VI. Violating Sepulture and the Remains
of the Dead, §§ 290-7.

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science, and other Offenses against
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VIII. Indecent Exposure, Obscene Exhibi-
tions, Books, and Prints, and Baw-
dy and Other Disorderly Houses,
§§ 311-18.

IX. Lotteries, §§ 319-26.

X. Gaming, §§ 330-6.

XI. Pawnbrokers, §§ 338-43.

XII. Other Injuries to Persons, §§ 346-67.

CHAPTER I.

RAPE, ABDUCTION, CARNAL ABUSE OF CHILDREN,
AND SEDUCTION.

- § 261. Rape defined.
- § 262. When physical ability must be proved.
- § 263. Penetration sufficient.
- § 264. Punishment of rape.
- § 265. Abduction of women.
- § 266. Seduction for purposes of prostitution.
- § 267. Abduction.
- § 268. Seduction under promise of marriage.
- § 269. Intermarriage subsequent to seduction.

§ 261. Rape is an act of sexual intercourse, accomplished with a female not the wife of the perpetrator, under either of the following circumstances:

1. Where the female is under the age of sixteen years;
2. Where she is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where she resists, but her resistance is overcome by force or violence;
4. Where she is prevented from resisting by threats of great and immediate bodily harm, accompanied by apparent power of execution, or by any intoxicating narcotic, or anaesthetic substance, administered by or with the privity of the accused;
5. Where she is at the time unconscious of the nature of the act, and this is known to the accused;
6. Where she submits under the belief that the person committing the act is her husband, and this belief is induced by any artifice, pretense, or

concealment practiced by the accused, with intent to induce such belief. [Amendment approved March 27, 1897; Stats. 1897, c. 139.]

Assault with intent to commit, sec. 220.

§ 262. No conviction for rape can be had against one who was under the age of fourteen years at the time of the act alleged, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt.

§ 263. The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

§ 264. Rape is punishable by imprisonment in the State prison not less than five years.

Stats. 1855, 105, sec. 1.

§ 265. Every person who takes any woman unlawfully, against her will, and by force, menace, or duress, compels her to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment in the State prison not less than two nor more than fourteen years.

Stats. 1856, 131, sec. 1.

§ 266. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution; or to have illicit carnal connection with any man; and every person who aids or assists in such inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent

means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the State prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [Amendment approved March 30, 1874; Amendments 1873-4, p. 429. In effect July 1, 1874.]

See "Act to punish Seduction," 1872, post Appendix, p. 653, and "Act to punish Adultery," 1872; See post, Appendix, p. 506.

Act to prevent prostitution: See post Appendix, p. 606.

Act to prevent placing married women in house of ill-fame: See post, Appendix, p. 608.

§ 267. Every person who takes away any female under the age of eighteen years from her father, mother, guardian, or other person having the legal charge of her person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the State prison not exceeding five years, and a fine not exceeding one thousand dollars.

Act to prevent prostitution: See post, Appendix, p. 606.

Act to prevent seduction: See post Appendix, p. 653.

§ 268. Every person who, under promise of marriage, seduces and has sexual intercourse with an unmarried female of previous chaste character, is punishable by imprisonment in the State prison for not more than five years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment. [New section approved Feb. 15th, 1889; Stats. 1889, p. 12.]

§ 269. The intermarriage of the parties subsequent to the commission of the offense is a bar to a prosecution for a violation of the last section; provided, such marriage take place prior to the finding of an indictment or the filing of an information charging such offense. [New section approved February 15, 1889; Stats. 1889, p. 12.]

CHAPTER II.

ABANDONMENT AND NEGLECT OF CHILDREN.

§ 270. Omitting to provide child with necessities.

§ 271. Deserting child.

§ 272. Disposing of child for mendicant business.

§ 270. Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor.

See Civil Code, secs. 193-215.

Indictable omissions: Sec. 26, subd. 6.

Duty of parent to support child: See Civ. Code, secs. 196, 208, 209.

Statutes: See "An act for the protection of children, and to prevent and punish certain wrongs to children," approved March 30, 1878; 1877-8, 812. Act relating to orphan and abandoned children, Stats. 1873-4, p. 297. Also, "An act relating to children," approved arch 30, 1878; 1877-8, 813; act to prevent cruelty to children: See post, Appendix, p. 570.

§ 271. Every parent of any child under the age of six years, and every person to whom any such child has been confided for nurture or education, who deserts such child in any place whatever,

with intent wholly to abandon it, is punishable by imprisonment in the State prison not exceeding seven years, or in a county jail not exceeding one year.

§ 272. Any person, whether as parent, relative, guardian, employer or otherwise, having in his care, custody, or control any child under the age of sixteen years, who shall sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title, or pretense, for the vocation, use, occupation, calling, service, or purpose of singing, playing on musical instruments, rope walking, dancing, begging, or peddling, in any public street or highway, or in any mendicant or wandering business whatsoever, and any person who shall take, receive, hire, employ, use, or have in custody any child for such purposes, or either of them, is guilty of a misdemeanor. [New section approved March 3, 1876; Amendments 1875-6 p. 110. In effect March 3, 1876.]

CHAPTER III.

ABORTIONS.

§ 274. Administering drugs, etc., with intent to produce miscarriage.

§ 275. Submitting to an attempt to produce miscarriage.

§ 274. Every person who provides, supplies, or administers to any pregnant woman, or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the State prison not less than two nor more than five years.

§ 275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the State prison not less than one nor more than five years.

The two preceding sections are based upon Stats. 1861, 588, sec. 1.

See Act of 1880, relating to sale of poisonous substance, Appendix, p. 593.

CHAPTER IV.

CHILD STEALING.

§ 278. Definition and punishment of child stealing.

§ 278. Every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the State prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars.

Stats. 1850, 131, sec. 2.

CHAPTER V.

BIGAMY, INCEST, AND THE CRIME AGAINST NATURE.

§ 281. Bigamy defined.

§ 282. Exceptions.

§ 283. Punishment of bigamy.

§ 284. Marrying a husband or wife of another.

§ 285. Incest.

§ 286. Crime against nature.

§ 287. Penetration sufficient to complete the crime.

§ 281. Every person having a husband or wife living, who marries any other person, except in the cases specified in the next section, is guilty of bigamy.

It is a civil contract, and does not require the intervention of a clergyman or a magistrate to make it legal: See Civ. Code, sec. 55.

§ 282. The last section does not extend—

1. To any person by reason of any former marriage, whose husband or wife by such marriage has been absent for five successive years, without being known to such person within that time to be living; nor,

2. To any person by reason of any former marriage which has been pronounced void, annulled, or dissolved by the judgment of a competent court.

Stats. 1861, 415, sec. 121.

§ 283. Bigamy is punishable by fine not exceeding two thousand dollars, and by imprisonment in the State prison not exceeding three years.

Stats. 1861, 415, sec. 1.

§ 284. Every person who knowingly and willfully marries the husband or wife of another, in any case in which such husband or wife would be

punishable under the provisions of this chapter, is punishable by fine not less than two thousand dollars, or by imprisonment in the State prison not exceeding three years.

§ 285. Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the State prison not exceeding ten years.

Incestuous marriages.—“Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and neices, or aunts and nephews, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate”: Civ. Code, sec. 59.

Person solemnizing incestuous marriage, how punished: Sec. 359, post.

§ 286. Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the State prison not less than five years.

Assault to commit crime against nature: See sec. 220.

§ 287. Any sexual penetration, however slight, is sufficient to complete the crime against nature.

CHAPTER VI.

VIOLATING SEPULTURE AND THE REMAINS OF THE DEAD.

- § 290. Unlawful mutilation or removal of dead bodies.
- § 291. Unlawful removal of dead body from grave for dissection, etc.
- § 292. Who are charged with the duty of burial.
- § 293. Punishment for omitting to bury.
- § 294. Who are entitled to custody of a body.
- § 295. Arresting or attaching a dead body.
- § 296. Defacing tombs and monuments.
- § 297. Unlawful interments.

§ 290. Every person who mutilates, disinters, or removes from the place of sepulture the dead body of a human being without authority of law, is guilty of felony. But the provisions of this section do not apply to any person who removes the dead body of a relative or friend for reinterment.

Bodies not to be removed without permit: Pol. Code, sec. 3027.

Act to prevent disinterring dead bodies: See post appendix, p. 608.

§ 291. Every person who removes any part of the dead body of a human being from any grave or other place where the same has been buried, or from any place where the same is deposited while awaiting burial, with intent to sell the same, or to dissect it, without authority of law, or from malice or wantonness, is punishable by imprisonment in the State prison not exceeding five years.

§ 292. The duty of burying the body of a deceased person devolves upon the persons herein-after specified:

Penal Code—10.

1. If the deceased was a married woman, the duty of burial devolves upon her husband.

2. If the deceased was not a married woman, but left any kindred, the duty of burial devolves upon the person or persons in the same degree nearest of kin to the deceased, being of adult age, and within this State, and possessed of sufficient means to defray the necessary expenses.

3. If the deceased left no husband nor kindred answering the foregoing description, the duty of burial devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the persons charged with the support of the poor in the locality in which the death occurs.

4. In case the person upon whom the duty of burial is cast by the foregoing provisions omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant; or if there is no tenant, upon the owner of the premises, or master, or if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

§ 293. Every person upon whom the duty of making burial of the remains of a deceased person is imposed by law, who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and, in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action.

§ 294. The person charged by law with the duty of burying the body of a deceased person is entitled to the custody of such body for the purpose of burying it; except that in the case in which

an inquest is required by law to be held upon a dead body by a coroner, such coroner is entitled to its custody until such inquest has been completed.

§ 295. Every person who arrests or attaches any dead body of any human being, upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

§ 296. Every person who willfully and maliciously defaces, breaks, destroys, or removes any tomb, monument, or gravestone, erected to any deceased person, or any memento or memorial, or any ornamental plant, tree, or shrub, appertaining to the place of burial of a human being, or who shall mark, deface, injure, destroy, or remove any fence, post, rail, or wall of any cemetery or graveyard, is guilty of a misdemeanor.

Violation of sepulcher: See Polit. Code, secs. 3074-3082.

§ 297. Every person who shall bury or inter, or cause to be buried or interred, the dead body of any human being, or any human remains, in any place within the corporate limits of any city or town in this State, or within the corporate limits of the city and county of San Francisco, except in a cemetery, or place of burial, now existing under the laws of this State, and in which interments have been made, or that is now or may hereafter be established or organized by the board of supervisors of the county, or city and county, in which such city or town, or city and county, is situated, shall be guilty of a misdemeanor. [New section approved March 30, 1874; Amendments 1873-4, p. 458. In effect March 30, 1874.]

CHAPTER VII.

OF CRIMES AGAINST RELIGION AND CONSCIENCE,
AND OTHER OFFENSES AGAINST GOOD MORALS.

- § 299. Sunday amusement, where liquors are sold. [Repealed.]
- § 300. Keeping open places of business on Sunday. [Repealed.]
- § 301. Limitation on operation of preceding section. [Repealed.]
- § 302. Disturbing religious meetings.
- § 303. Sale of liquors at theaters, and employing women to sell liquors thereat.
- § 304. Selling liquors at camp-meeting.
- § 305. Limitation of preceding section.
- § 306. Females exhibited in public places.
- § 307. Keeping or resorting to place where opium is used.
- § 308. Selling tobacco to minors.
- § 309. Admission of minor to place of prostitution.
- § 310. No section of this number.
- § 310½. Barber shops open on Sunday.

§ 299. Relating to Sunday exhibitions and amusements was repealed by act approved and in effect February 8th, 1883.

Stats. 1883, p. 1.

Section repealed by the act of February 8, 1883; Statutes and Amendments 1883, 1. The section read as follows: "Sec. 299. Every person who, on the Christian sabbath, gets up, exhibits, opens, or maintains, or aids in getting up, exhibiting, opening, or maintaining, any bull, bear, cock, or prize fight, horse-race, circus, gambling-house, or saloon, or any barbarous and noisy amusement, or who keeps, conducts, or exhibits any theater, melodeon, dance-cellar, or other place of musical, theatrical, or operatic performance, spectacle, or representation where any wines, liquors, or intoxicating drinks are bought, sold, used, drank, or given away, or who purchases any ticket of admission, or directly or indirectly pays any admission fee

to or for the purpose of witnessing or attending any such place, amusement, spectacle, performance, or representation, is guilty of a misdemeanor."

§ 300. Relating to transaction of business on Sunday, was repealed by act approved and in effect February 8, 1883, Stats. 1883, p. 1.

Section repealed by the act of February 8, 1883; Statutes and Amendments 1883, 1. The section read as follows: "Sec. 300. Every person who keeps open on Sunday any store, workshop, bar, saloon, banking-house, or other place of business, for the purpose of transacting business therein, is punishable by fine not less than five nor more than fifty dollars."

§ 301. Excepting certain business from the provisions of foregoing sections, was repealed by act approved and in effect February 8, 1883.

Stats. 1883, p. 1.

Section repealed by act of February 8, 1883, Statutes and Amendments 1883, 1. The original section read as follows: "Sec. 301. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, markets, restaurants, taverns, livery-stables, or retail drug stores, for the legitimate business of each, or such manufacturing establishments as are usually kept in continued operation."

That section was amended in 1880, Stats. 1880, 38, to read as follows: "Sec. 301. The provisions of the preceding section do not apply to persons who, on Sunday, keep open hotels, boarding-houses, barber-shops, baths, markets, restaurants, taverns, livery-stables, or retail drug-stores, for the legitimate business of each, or such manufacturing establishments as are usually kept in con-

tinued operation; provided, that the provisions of the preceding section shall apply to persons keeping open barber-shops, bath-houses, and hair-dressing saloons after 12 o'clock M. on Sunday. [Amendment, approved April 15, 1880; Amendments 1880, 38 (Ban. ed. 252); took effect fifteen days after approval.]

Act providing day of rest from labor. See post, appendix, p. 695.

Act providing for day of rest in bakeries. See post, appendix, p. 696.

§ 302. Every person who willfully disturbs or disquiets any assemblage of people met for religious worship, by noise, profane discourse, rude or indecent behavior, or by any unnecessary noise, either within the place where such meeting is held, or so near it as to disturb the order and solemnity of the meeting, is guilty of a misdemeanor.

§ 303. Every person who sells or furnishes any malt, vinous, or spirituous liquors to any person in the auditorium or lobbies of any theater, melodeon, museum, circus, or caravan, or place where any farce, comedy, tragedy, ballet, opera, or play is being performed, or any exhibition of dancing, juggling, wax-work figures and the like is being given for public amusement, and every person who employs or procures, or causes to be employed or procured, any female to sell or furnish any malt, vinous, or spirituous liquors at such place, is guilty of a misdemeanor.

Stats. 1863, 252, sec. 3.

See Const. Cal., sec. 18, art. 22.

Sale of liquors to minors, Act of 1872, Appendix, p. 578; intoxication of officers, Act of 1880, Appendix, p. 586.

Special acts.—Sale of liquors on election days. Act in effect March 7, 1874; Stats. 1873-4, 297. See

post Appendix, p. 580. Sale of liquors at state capitol, Act in effect April 16, 1880; Stats. 1880, 273; see post, appendix, p. 581.

§ 304. Every person who erects or keeps a booth, tent, stall, or other contrivance for the purpose of selling or otherwise disposing of any wine, or spirituous or intoxicating liquors, or any drink of which wines, spirituous or intoxicating liquors form a part, or for selling or otherwise disposing of any article of merchandise, or who peddles or hawks about any such drink or article, within one mile of any camp or field meeting for religious worship, during the time of holding such meeting, is punishable by fine of not less than five nor more than five hundred dollars.

Stats. 1859, 188, sec. 1.

§ 305. The provisions of the preceding section do not apply to any person carrying on a regular business in the sale of liquors or other articles, which business was established prior to the appointment of the meeting referred to in such section.

Stats. 1859, 188, sec. 1.

§ 306. Every person who causes, procures, or employs any female for hire, drink, or gain, to play upon any musical instrument, or to dance, promenade, or otherwise exhibit herself, in any drinking saloon, dance-cellar, ballroom, public garden, public highway, common, park, or street, or in any ship, steamboat, or railroad car, or in any place whatsoever, if in such place there is connected therewith the sale or use, as a beverage, of any intoxicating, spirituous, vinous, or malt liquors; or who shall allow the same in any premises under his control, where intoxicating, spirituous, vinous, or malt liquors are sold or used, when

two or more persons are present, is punishable by a fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and every female so playing upon any musical instrument, or dancing, promenading, or exhibiting herself, as herein aforesaid, is punishable by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both. [Amendment, approved March 30, 1874; Amendments 1873-4, p. 460. In effect in sixty days.]

§ 307. Every person who opens or maintains, to be resorted to by other persons, any place where opium, or any of its preparations, is sold or given away, to be smoked at such place, and any person who at such place sells or gives away any opium, or its said preparations, to be there smoked or otherwise used, and every person who visits or resorts to any such place for the purpose of smoking opium, or its said preparations, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [New section approved March 4, 1881; Stats. 1881, p. 34. In effect March 4, 1881.]

Stats. 1881, p. 34.

Section 307 was first amended by act approved March 10, 1874; Amendments 1873-4, 459; took effect sixtieth day from passage, and afterward repealed by act approved March 30, 1874; Amendments 1873-4, 461; took effect sixtieth day from passage.

Repealed section:

"Sec. 307. Every person who causes, or procures or employs, any female, under the age of seventeen years, to dance, promenade, or other-

wise exhibit herself for hire, drink, or gain, in any drinking-saloon, dance-cellar, ball-room, public garden, public highway, or in any place whatsoever (theaters excepted), where two or more persons are assembled together, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding three months, or by both; and every female under the age of seventeen years so dancing, promenading, or exhibiting herself is punishable by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding one month, or by both."

The amendment of March 10, 1874, above referred to, did not have the words "under the age of seventeen years," and instead of "whatsoever (theaters excepted), where two or more persons are assembled together," it had the words "of a similar or immoral character."

§ 308. Every person who sells, or gives, or furnishes in any way to another who is in fact under the age of sixteen years, any tobacco, or preparation of tobacco, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars; provided, however, that this section shall not be deemed to apply to articles furnished on prescriptions from physicians authorized by law to practice medicine, nor to persons who supply such articles to their own children, nor to sales made to such minors upon the written consent of the parents or guardians of such minors first obtained in writing by the vender. [New section added March 10, 1891; Stats. 1891, p. 64.]

Sale of liquor to minors. See post, Appendix, p. 578.

§ 309. Any proprietor, keeper, manager, conductor, or person having the control of any house of prostitution, or any house or room resorted to for the purpose of prostitution, who shall admit or keep any minor of either sex therein, or any parent or guardian of any such minor who shall admit or keep such minor, or sanction, or connive at the admission or keeping thereof, into, or in any such house or room, shall be guilty of a misdemeanor. [New section approved April 12, 1880; Amendments 1880, p. 35. In effect April 12, 1880.]

Act to punish using child for immoral purposes. See post, appendix, p. 572.

Act prohibiting child entering saloon, begging, etc. eSe post, appendix, p. 575.

§ 310. No section of this number.

§ 310½. Every person who as proprietor, manager, lessee, employee, or agent keeps open or conducts, or causes to be kept open or conducted, any barber-shop, bath-house and barber-shop, barber-shop of a bathing establishment, or hair-dressing establishment, or any place for shaving or hair-dressing, used or conducted in connection with any other place of business or resort, or who engages at work or labor as a barber in any such shop or establishment on Sunday, or on a legal holiday, after the hour of 12 o'clock M. of said day, is guilty of a misdemeanor. [New section approved March 27, 1895. Stats 1895, p. 247. In effect in sixty days.]

CHAPTER VIII.

INDECENT EXPOSURE, OBSCENE EXHIBITIONS,
BOOKS AND PRINTS, AND BAWDY AND OTHER
DISORDERLY HOUSES.

- § 311. Indecent exposures, exhibitions, and pictures.
- § 312. Seizure of indecent articles authorized.
- § 313. Their character to be summarily determined.
- § 314. Their destruction.
- § 315. Keeping or residing in a house of ill-fame.
- § 316. Keeping disorderly houses.
- § 317. Advertising to produce miscarriage.
- § 318. Enticing to place of gambling or prostitution.

§ 311. Every person who willfully and lewdly, either:

1. Exposes his person or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or,

2. Procures, counsels, or assists any person so to expose himself, or to take part in any model artist exhibition, or to make any other exhibition of himself to public view or to the view of any number of persons, such as is offensive to decency, or is adapted to excite to lewd or vicious thoughts or acts; or,

3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print, or figure; or,

5. Sings any lewd or obscene song, ballad, or other words, in any public place, or in any place

where there are persons present to be annoyed thereby, is guilty of a misdemeanor. [Amendment, approved March 30, 1874; Amendments 1873-4, p. 429. In effect July 1, 1874.]

§ 312. Every person who is authorized or enjoined to arrest any person for a violation of subdivision three of the last section, is equally authorized and enjoined to seize any obscene or indecent writing, paper, book, picture, print, or figure found in possession or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

§ 313. The magistrate to whom any obscene or indecent writing, paper, book, picture, print, or figure, is delivered, pursuant to the foregoing section, must, upon the examination of the accused, or, if the examination is delayed or prevented, without awaiting such examination, determine the character of such writing, paper, book, picture, print, or figure, and if he finds it to be obscene or indecent, he must deliver one copy to the district attorney of the county in which the accused is liable to indictment or trial, and must at once destroy all the other copies.

§ 314. Upon the conviction of the accused, such district attorney must cause any writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted, and which remains in the possession or under the control of such district attorney, to be destroyed.

§ 315. Every person who keeps a house of ill-fame in this State, resorted to for the purposes of prostitution or lewdness, or who willfully resides in such house, is guilty of a misdemeanor.

Stats. 1855, 76, sec. 1.

§ 316. Every person who keeps any disorderly house, or any house for the purpose of assignation or prostitution, or any house of public resort, by which the peace, comfort, or decency of the immediate neighborhood is habitually disturbed, or who keeps any inn in a disorderly manner; and every person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor. [Amendment, approved March 30, 1874. In effect July 1, 1874; Amendments 1873-4, p. 430.]

§ 317. Every person who willfully writes, composes, or publishes any notice or advertisement of any medicine, or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement, or otherwise, to assist in the accomplishment of any such purpose, is guilty of a felony. [New section approved March 30, 1874; Amendments 1873-4, p. 430. In effect July 1, 1874.]

§ 318. Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purposes of gambling or prostitution, is guilty of a misdemeanor; and, upon conviction thereof, shall be confined in the county jail not exceeding six months, or fined not exceeding five hundred dollars, or be punished by both such fine and imprisonment. [New section approved April 16, 1880; Amendments 1880, p. 40. In effect April 16, 1880.]

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CHAPTER IX.

LOTTERIES.

- § 319. Lottery defined.
- § 320. Punishment for drawing lottery.
- § 321. Punishment for selling lottery tickets.
- § 322. Aiding lotteries.
- § 323. Lottery offices. Advertising lottery offices.
- § 324. Insuring lottery tickets. Publishing offers to insure.
- § 325. Property offered for disposal in lottery forfeited.
- § 326. Letting building for lottery purposes.

§ 319. A lottery is any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or interest in such property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known.

§ 320. Every person who contrives, prepares, sets up, proposes, or draws any lottery, is guilty of a misdemeanor.

§ 321. Every person who sells, gives, or in any manner whatever furnishes or transfers to or for any other person any ticket, chance, share, or interest, or any paper, certificate, or instrument purporting or understood to be or to represent any ticket, chance, share, or interest in, or depending upon the event of any lottery, is guilty of a misdemeanor.

§ 322. Every person who aids or assists, either by printing, writing, advertising, publishing, or

otherwise, in setting up, managing, or drawing any lottery, or in selling or disposing of any ticket, chance, or share therein, is guilty of a misdemeanor.

§ 323. Every person who opens, sets up, or keeps, by himself or by any other person, any office or other place for the sale of, or for registering the number of any ticket in any lottery, or who by printing, writing, or otherwise, advertises or publishes the setting up, opening, or using of any such office, is guilty of a misdemeanor.

§ 324. Every person who insures or receives any consideration for insuring for or against the drawing of any ticket in any lottery whatever, whether drawn or to be drawn within this State or not, or who receives any valuable consideration upon any agreement to repay any sum, or deliver the same, or any other property, if any lottery ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not be drawn, at any particular time or in any particular order, or who promises or agrees to pay any sum of money, or to deliver any goods, things in action, or property, or to forbear to do anything for the benefit of any person, with or without consideration, upon any event or contingency, dependent on the drawing of any ticket in any lottery, or who publishes any notice or proposal of any of the purposes aforesaid, is guilty of a misdemeanor.

§ 325. All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the State, and may be recovered by information filed, or by an action brought by the attorney-general, or by any district attorney, in the name of the State. Upon the filing of information or complaint, the

clerk of the court, or, if the suit be in a justice's court, the justice, must issue an attachment against the property mentioned in the complaint or information, which attachment has the same force and effect against such property, and is issued in the same manner, as attachments issued from the district courts in civil cases.

§ 326. Every person who lets, or permits to be used, any building or vessel, or any portion thereof, knowing that it is to be used for setting up, managing, or drawing any lottery, or for the purpose of selling or disposing of lottery tickets, is guilty of a misdemeanor.

CHAPTER X.

GAMING.

- § 330. Gaming prohibited. Penalty.
- § 331. Permitting gambling in houses owned or rented.
- § 332. Winning at play by fraudulent means.
- § 333. Witnesses neglecting or refusing to attend trial.
- § 334. Witness' privilege.
- § 335. Duties of district attorneys, sheriffs, and others.
- § 333. Permitting minor to play in saloon.
- § 337. Pretending to give authority to conduct games.

§ 330. Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noir, rondo, tan, fan-tan, stud-horse poker, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative or value, and every person who plays or bets at or against any of said prohibited games, is guilty of a misdemeanor, and shall be punishable by a fine not less than one

hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [Amendment, approved March 10, 1891; Stats. 1891, p. 57.]

§ 331. Every person who knowingly permits any of the games mentioned in the preceding section to be played, conducted, or dealt in any house owned or rented by such person, in whole or in part, is punishable as provided in the preceding section.

§ 332. Every person who, by the game of "three-card monte" so-called, or any other game, device, sleight of hand, pretensions to fortune-telling, trick, or other means whatever, by use of cards or other implements or instruments, or while betting on sides or hands of any such play or game, fraudulently obtains from another person money or property of any description, shall be punished as in case of larceny of property of like value. [Amendment, approved April 16, 1880; Amendments 1880, p. 40. In effect April 16, 1880.]

§ 333. Every person duly summoned as a witness for the prosecution, on any proceedings had under this chapter, who neglects or refuses to attend, as required, is guilty of a misdemeanor.

See Code Civ. Proc., part iv, title iii, chap. ii.

§ 334. No person, otherwise competent as a witness, is disqualified from testifying as such concerning the offense of gaming, on the ground that such testimony may criminate himself; but no prosecution can afterward be had against him for any offense concerning which he testified.

§ 335. Every district attorney, sheriff, constable, or police officer must inform against and dili-

gently prosecute persons whom they have reasonable cause to believe offenders against the provisions of this chapter, and every such officer refusing or neglecting to do so, is guilty of a misdemeanor.

§ 336. Every owner or lessee, or keeper of any house used in whole, or in part, as a saloon or drinking-place, who knowingly permits any person under twenty-one years of age to play at any game of chance therein, is guilty of a misdemeanor. [New section approved March 24, 1874; Amendments 1873-4, p. 461. In effect in sixty days.]

§ 337. Every State, county, city, city and county, town, or township officer, or other person who shall ask for, receive, or collect any money, or other valuable consideration, either for his own or the public use, for and with the understanding that he will aid, exempt, or otherwise assist any person from arrest or conviction for a violation of section three hundred and thirty of the Penal Code; or who shall issue, deliver, or cause to be given or delivered to any person or persons any license, permit, or other privilege, giving or pretending to give any authority or right to any person or persons to carry on, conduct, open, or cause to be opened, any game or games which are forbidden or prohibited by section three hundred and thirty of said Code; and of any such officer or officers who shall vote for the passage of any ordinance or by-law, giving, granting, or pretending to give or grant to any person or persons any authority or privilege to open, carry on, conduct, or cause to be opened, carried on, or conducted, any game or games prohibited by said section three hundred and thirty of the Penal Code, is guilty of a felony. [New section approved March 12, 1885. Stats. 1885, p. 113.]

CHAPTER XI.

PAWNBROKERS.

- § 338. Pawnbroking without license.
- § 339. Failing to keep a register.
- § 340. Charging unlawful rate of interest.
- § 341. Selling before time of redemption has expired, or without notice.
- § 342. Refusing to disclose particulars of sale.
- § 343. Refusing to allow an officer with search-warrant to inspect register of pledged articles.

§ 338. Every person who carries on the business of a pawnbroker, by receiving goods in pledge for loans at any rate of interest above the rate of ten per cent per annum, except by authority of a license, is guilty of a misdemeanor.

Constitutional law: See sec. 501, post, and see Civ. Code, secs. 2086-3011.

§ 339. Every person who carries on the business of a pawnbroker, who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged, or the name and residence of the pledgor, or to deliver to the pledgor a written copy of such entry, or to keep an account in writing of all sales made by him, is guilty of a misdemeanor.

See sec. 502, post.

§ 340. Every pawnbroker who charges or receives interest at the rate of more than two per cent per month, or who, by charging commissions, discount, storage, or other charge, or by compounding, increases or attempts to increase such

interest, is guilty of a misdemeanor. [Amendment, approved March 7, 1881; Amendments 1881, p. 75. In effect March 7, 1881.]

§ 341. Every pawnbroker who sells any article pledged to him and unredeemed, until it has remained in his possession six months after the last day fixed by contract for redemption, or who makes any sale without publishing in a newspaper printed in the city, town, or county, at least five days before such sale, a notice containing a list of the articles to be sold and specifying the time and place of sale, is guilty of a misdemeanor.

§ 342. Every pawnbroker who willfully refuses to disclose to the pledgor or his agent the name of the purchaser and the price received by him for any article received by him in pledge and subsequently sold, or who, after deducting from the proceeds of any sale the amount of the loan and interest due thereon, and four per cent on the loan for expenses of sale, refuses, on demand, to pay the balance to the pledgor or his agent, is guilty of a misdemeanor.

See sec. 502, post.

§ 343. Every pawnbroker who fails, refuses, or neglects to produce for inspection his register, or to exhibit all articles received by him in pledge, or his account of sales, to any officer holding a warrant authorizing him to search for personal property, or the order of a committing magistrate directing such officer to inspect such register, or examine such articles or account of sales, is guilty of a misdemeanor.

See sec. 502, post.

CHAPTER XII.

OTHER INJURIES TO PERSONS.

- § 346. Acts of intoxicated physicians.
- § 347. Willfully poisoning food, medicine, or water.
- § 348. Mismanagement of steamboats.
- § 349. Mismanagement of steam-boilers.
- § 350. Counterfeiting trade-marks.
- § 351. Selling goods which bear counterfeit trade-marks.
- § 352. Definition of the phrase "counterfeited trade-marks," etc.
- § 353. "Trade-mark" defined.
- § 354. Refilling casks, etc., bearing trade-mark.
- § 355. Defacing marks upon wrecked property and destroying bills of lading.
- § 356. Defacing marks upon logs, lumber, or wood.
- § 357. Altering brands.
- § 358. Frauds in affairs of special partnership.
- § 359. Contracting or solemnizing incestuous or forbidden marriages.
- § 360. Making false return or record of marriage.
- § 361. Cruel treatment of lunatics, etc.
- § 362. Refusing to issue or obey writ of habeas corpus.
- § 363. Reconfining persons discharged upon writ of habeas corpus.
- § 364. Concealing persons entitled to benefit of habeas corpus.
- § 365. Innkeepers and carriers refusing to receive guests.
- § 366. Counterfeiting quicksilver stamps.
- § 367. Selling debased quicksilver.

§ 346. Every physician who, in a state of intoxication, does any act as such physician to another person by which the life of such other person is endangered, is guilty of a misdemeanor.

§ 347. Every person who willfully mingles any poison with any food, drink, or medicine, with intent that the same shall be taken by any human being, to his injury, and every person who willfully poisons any spring, well, or reservoir of

water, is punishable by imprisonment in the State prison for a term not less than one nor more than ten years.

Act to regulate sale of poisons: See post, Appendix, p. 593.

§ 348. Every captain or other person having charge of any steamboat used for the conveyance of passengers, or of the boilers and engines thereof, who from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, or any apparatus or machinery connected therewith, by which bursting or breaking human life is endangered, is guilty of a felony. [Amendment approved March 30, 1874; Amendments 1873-4, p. 431. In effect July 1, 1874.]

§ 349. Every engineer or other person having charge of any steam-boiler, steam-engine, or other apparatus for generating or employing steam, used in any manufactory, railway, or other mechanical works, who willfully, or from ignorance, or gross neglect, creates, or allows to be created such an undue quantity of steam as to burst or break the boiler, or engine, or apparatus, or cause any other accident whereby human life is endangered, is guilty of a felony. [Amendment approved March 30, 1874; Amendments, 1873-4, p. 431. In effect July 1, 1874.]

As to personal injuries, see Civ. Code, §§ 43, 1708, 1714, 1838, and 2194.

§ 350. Every person who willfully reproduces, copies, imitates, forges, or counterfeits, or procures to be reproduced, copied, imitated, forged, or counterfeited, any trademark usually affixed by any person to his goods, which has been duly recorded in the office of the Secretary of State, or

with the Commissioner of Patents in the United States Patent Office, or any label or brand, composed in whole or in part of a reproduction of said trademark, or who affixes the same to goods of essentially the same descriptive properties and qualities as those referred to in the registration of such trademark, with intent to pass off, or to assist other persons to pass off, any goods to which such reproduced, copied, imitated, forged, or counterfeited trademark, or label, or brand is affixed, or intended to be affixed, as the goods of the person, firm, company, or corporation owning the said trademark, is guilty of a misdemeanor. [Amendments approved March 27th, 1897; Stats. 1897, ch. 157.]

Act to prevent fraud in stamping and labeling produce and manufactured goods: See post, appendix, p. 585.

See trademarks, Civ. Code, §§ 655, 991; and Pol. Code, §§ 3196-3199.

§ 351. Every person who sells or keeps for sale, or manufactures or prepares, for the purpose of sale, any goods upon, or to which any reproduced, copied, imitated, forged, or counterfeited trademark, or label, or brand, composed in whole or in part of such reproduced, copied, imitated, forged, or counterfeited trademark has been affixed, after such trademark has been recorded in the office of the Secretary of State, or with the Commissioner of Patents in the United States Patent Office, intending to represent such goods as the genuine goods of the person, firm, company, or corporation owning the said trademark, knowing the same to be reproduced, copied, imitated, forged, or counterfeited, is guilty of a misdemeanor. [Amendment approved March 27, 1897; Stats. 1897, ch. 157.]

Genuineness of trademark warranted by sale of article bearing it: Civ. Code, § 1772.

§ 352. The phrases "forged trademark" and "counterfeited trademark," or their equivalents, as used in this chapter, include every alteration or imitation of any trademark so resembling the original as to be likely to deceive.

§ 353. The phrase "trademark," as used in the three preceding sections, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any goods to be goods imported, manufactured, produced, compounded, or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description.

§ 354. Every person who has in his possession, or who uses any cask, bottle, vessel, case, cover, label, brand, or other thing bearing, or having in any way connected with it, the trademark of another, which has been duly recorded in the office of the Secretary of State, or with the Commissioner of Patents in the United States Patent Office, or the trade name of another, for the purpose of disposing of any article other than that which such cask, bottle, vessel, case, cover, label, brand, or other thing originally contained, or is connected with by the owner of such trademark or trade name, with intent to deceive or defraud, is guilty of a misdemeanor. [Amendment approved March 27, 1897; Stats. 1897, ch. 157: See §§ 349, 350, 351.]

§ 355. Every person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of

lading, or other document tending to show the ownership, is guilty of a misdemeanor.

Wrecks and wrecked property: Pol. Code, §§ 2403 et seq.

§ 356. Every person who cuts out, alters, or defaces any mark made upon any log, lumber, or wood, or puts a false mark thereon with intent to prevent the owner from discovering its identity, is guilty of a misdemeanor.

Floating lumber: Pol. Code, §§ 2389 et seq.

§ 357. Every person who marks or brands, alters, or defaces the mark or brand of any horse, mare, colt, jack, jeunet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat, or pig, belonging to another with intent thereby to steal the same, or to prevent identification thereof by the true owner, is punishable by imprisonment in the State prison for not less than one nor more than five years.

Marks and brands: See Pol. Code, §§ 3167-3172, 3182-3185.

§ 358. Every member of a special partnership, who commits any fraud in the affairs of the partnership, is guilty of a misdemeanor.

Special partnership: See Civ. Code, §§ 2477 et seq.

§ 359. Every person authorized to solemnize marriage, who willfully and knowingly solemnizes any incestuous or other marriage forbidden by law, is punishable by fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both.

Incestuous marriage defined: Civ. Code, § 59.

Punishment of parties to incestuous marriage: See § 285, ante.

Person authorized to solemnize marriage: Civ. Code, § 70.

§ 360. Every person authorized to solemnize any marriage, who willfully makes a false return of any marriage or pretended marriage to the recorder, and every person who willfully makes a false record of any marriage return, is punishable as provided in the preceding section.

Stats. 1850, 424, § 11.

See Civ. Code, § 76.

Certificate of marriage: Civ. Code, § 73.

Recording certificate of marriage: Civ. Code, § 74.

§ 361. Every person guilty of any harsh, cruel or unkind treatment of, or any neglect of duty, towards, any idiot, lunatic, or insane person, is guilty of a misdemeanor.

§ 362. Every officer or person to whom a writ of habeas corpus may be directed, who, after service thereof, neglects or refuses to obey the command thereof, is guilty of a misdemeanor.

Stats. 1850, 334, §§ 9, 39.

§ 363. Every person who, either solely or as member of a court, knowingly and unlawfully commits, imprisons, or restrains of his liberty, for the same cause, any person who has been discharged upon a writ of habeas corpus, is guilty of a misdemeanor.

False imprisonment: See § 236.

Habeas corpus, writ of: §§ 1473 et seq.

§ 364. Every person having in his custody, or under his restraint or power, any person for whose relief a writ of habeas corpus has been issued, who, with the intent to elude the service of such

writ, or to avoid the effect thereof, transfers such person to the custody of another, or places him under the power or control of another, or conceals or changes the place of his confinement or restraint, or removes him without the jurisdiction of the court or judge issuing the writ, is guilty of a misdemeanor.

Stats. 1850, 334, § 29.

Habeas corpus: See chapter concerning the writ of, §§ 1473 et seq.

§ 365. Every person, and every agent or officer of any corporation, carrying on business as an innkeeper, or as a common carrier of passengers, who refuses, without just cause or excuse, to receive and entertain any guest or to receive and carry any passenger, is guilty of a misdemeanor.

Common carriers of passengers: Civ. Code, §§ 2168-2176, 2180-2191.

Innkeepers: Civ. Code, secs. 1859, 1860.

Act punishing refusal to sell ticket: See post, appendix, p. 545.

§ 366. Every person who counterfeits, or who willfully uses the counterfeited seal or stamp of any person engaged in manufacturing or selling quicksilver, is guilty of a felony: See ante, §§ 349, 350.

§ 367. Every person who willfully sells, or offers for sale as pure, any debased or adulterated quicksilver, is guilty of a misdemeanor: See ante, §§ 349, 350.

TITLE X.

OF CRIMES AGAINST THE PUBLIC HEALTH AND SAFETY.

- § 368. Death from explosions, etc.
- § 369. Death from collision on railroads.
- § 370. "Public nuisances" defined.
- § 371. Unequal damage.
- § 372. Maintaining a nuisance, a misdemeanor.
- § 373. Establishing or keeping pest-houses within cities, towns, etc.
- § 374. Putting dead animals in streets, rivers, etc.
- § 375. Keeping gunpowder, etc., unlawfully.
- § 376. Violation of quarantine laws by masters of vessels.
- § 377. Willful violation of health laws.
- § 378. Neglecting to perform duties under health law.
- § 379. Unlicensed piloting.
- § 380. Apothecary omitting to label drugs, or labeling them wrongfully, etc.
- § 381. Putting extraneous substances in packages of goods usually sold by weight, with intent to increase weight.
- § 382. Adulterating food, drugs, liquors, etc.
- § 383. Disposing of tainted food, etc.
- § 384. Setting woods on fire.
- § 385. Obstructing attempts to extinguish fires.
- § 386. Maintaining bridge or ferry without authority.
- § 387. Violating condition of undertaking to keep ferry.
- § 388. Riding or driving faster than a walk on toll-bridges.
- § 389. Crossing toll-bridges, etc., without paying toll.
- § 390. Engineer of locomotive engine omitting to ring bell when crossing highway.
- § 391. Intoxication of engineers, conductors, or drivers of locomotives or cars.
- § 392. Placing passenger cars in front of freight cars.
- § 393. Violation of duty by employees of railroad companies.
- § 394. Exposing person infected with any contagious disease in a public place.
- § 395. Frauds practiced to affect the market price.
- § 396. Racing upon highways.
- § 397. Selling liquor to Indians.
- § 398. Selling firearms and ammunition to Indians.
- § 399. Death from mischievous animals.
- § 400. Exhibiting deformities of person.
- § 400. Aiding or encouraging suicide a felony.
- § 402. Using or exposing animal with glanders.
- § 402.¼. Adulterating candy.
- § 402½. Animal having glanders to be killed.

§ 368. Every person having charge of any steam-boiler or steam-engine, or other apparatus for generating or employing steam, used in any manufactory, or on any railroad, or in any vessel, or in any kind of mechanical work, who willfully or from ignorance or neglect, creates, or allows to be created, such an undue quantity of steam as to burst or break the boiler, engine, or apparatus, or to cause any other accident whereby the death of a human being is produced, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

Act to protect life and property against careless use of explosives: See post, Appendix, p. 546.

§ 369. Every conductor, engineer, brakeman, switchman, or other person having charge, wholly or in part, of any railroad car, locomotive, or train who willfully or negligently suffers or causes the same to collide with another car, locomotive, or train, or with any other object or thing whereby the death of a human being is produced, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

§ 370. Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment or life or property, by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway is a public nuisance. [Amendment approved March 30th, 1874; Amendments 1873-4, p. 431. In effect July 1st, 1874.

Public nuisance: Compare with Civ. Code, § 3480.: See also §§ 3490-3495 of that Code upon this subject generally.

§ 371. An act which affects an entire community or neighborhood, or any considerable number of persons, as specified in the last section, is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal. [Amendment approved March 30th, 1874; Amendments 1873-4, p. 432. In effect July 1st, 1874.]

§ 372. Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor.

§ 373. Every person who establishes or keeps or causes to be established or kept, within the limits of any city, town, or village, any pest-house hospital, or place for persons affected with contagious or infectious diseases, is guilty of a misdemeanor.

Stats. 1853, 35, §§ 1, 2.

§ 374. Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral, or butchershop, into any river, creek, pond, reservoir, stream, street, alley, public highway, or road in common use, or who attempts to destroy the same by fire within one-fourth of a mile of any city, town or village, except it be in a cemetery, the construction and operation of which is satisfactory to the board of health in such city, town or village; and any person who puts any water-closet or privy, or the carcass of any dead animal, or any offal of any kind, in or upon the borders of any stream, pond, lake, or reservoir, from which water is drawn for the supply of the inhabitants of any city, city and county, or any town in this state, so that the drainage from such water-closet, privy, carcass, or offal may be taken

up by or in such stream, pond, lake, or reservoir; or who allows any water-closet, or privy, or carcass of any dead animal, or any offal of any kind to remain in or upon the borders of any such stream, pond, lake, or reservoir within the boundaries of any land owned or occupied by him, so that the drainage from such water-closet, privy, carcass, or offal may be taken up by or in such stream, pond, lake or reservoir; or who keeps any horses, mules, cattle, swine, sheep, or live-stock of any kind, penned, corralled, or housed on, over, or on the borders of any such stream, pond, lake, or reservoir, so that the waters thereof shall become polluted by reason thereof; or who bathes in any such stream, pond, lake, or reservoir; or who by any other means fouls or pollutes the waters of any such stream, pond lake or reservoir, is guilty of a misdemeanor, and upon conviction thereof shall be punished as prescribed in section three hundred and seventy-seven of this code. [Amendment approved March 3, 1893; Stats. 1893, p. 66. In effect immediately.]

§ 375. Every person who makes or keeps gunpowder, nitro-glycerine, or other highly explosive substance, within any city or town, or who carries the same through the streets thereof, in any quantity or manner such as is prohibited by law, or by any ordinance of such city or town, is guilty of a misdemeanor.

§ 376. Every master of a vessel subject to quarantine or visitation by the quarantine officer, arriving in the port of San Francisco, who refuses or omits—

1. To proceed with and anchor his vessel at the place assigned for quarantine, at the time of his arrival; or,

2. To submit his vessel, cargo, and passengers to the examination of the quarantine officer, and

to furnish all necessary information to enable that officer to determine to what length of quarantine and other regulations they ought, respectively, to be subject; or,

3. To remain with his vessel at the quarantine during the period assigned for her quarantine, and while at quarantine to comply with the regulations prescribed by law, and with such as any of the officers of health, by virtue of authority given them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers, or crew;—is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both. [Amendment approved March 9, 1878; Amendments 1877-8, p. 116. In effect March 9, 1878.]

Quarantine and health regulations for San Francisco: Secs. 3004 et seq. of Polit. Code.

Shipmaster's duties: Secs. 3013, 3014, 3016-3019, of Polit. Code.

§ 377. Every person who is charged with a duty relating to the registration of deaths, under chapter three, title seven, of the act to establish a Political Code, approved March 12th, eighteen hundred and seventy-two, who—

1. Willfully fails to keep a registry of the name, age, residence and time of death of a decedent; or,

2. Willfully fails to register with the County Recorder a certified copy of such register, as is provided for in said chapter; or,

3. Willfully inters, cremates, or otherwise disposes of any human body, in any city, county, or city and county, without having first obtained a permit, as provided for in said chapter; or,

4. Willfully grants a permit for the interment, cremation, or disposition of a dead human body,

without the certificate provided for in said chapter; or,

5. Willfully violates any of the laws of this State relating to the preservation of the public health;

Is guilty of a misdemeanor, and is, unless a different punishment for such violation is prescribed by this Code, punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars or by both such fine and imprisonment. [Amendment approved February 25, 1889; Stats. 1889, p. 34.]

Preservation of public health: Secs. 2978 et seq., Polit. Code.

§ 378. Every person charged with the performance of any duty under the laws of this State relating to the preservation of the public health, who willfully neglects or refuses to perform the same, is guilty of a misdemeanor.

See Polit. Code, secs. 2978-3063.

§ 379. Every person, not the master or owner, or not authorized to act as pilot under the laws of this State, who pilots or offers to pilot any vessel to or from any port of this State for which there are commissioned or licensed pilots, or who pilots or offers to pilot any vessel to or from any port other than that for which he is commissioned or licensed, and for which there are pilots so commissioned or licensed, is guilty of a misdemeanor. [Amendment approved March 30, 1874; Amendments 1873-4, p. 432. In effect July 1, 1874.]

See Polit Code, secs. 2429-2447, 2457-2468, 2476-2491.

§ 380. Every apothecary, druggist, or person carrying on business as a dealer in drugs or medicines, or person employed as clerk or salesman by

such person, who, in putting up any drugs or medicines, or making up any prescription, or filling any order for drugs or medicines, willfully, negligently, or ignorantly omits to label the same, or puts an untrue label, stamp, or other designation of contents, upon any box, bottle, or other package containing any drugs or medicines, or substitutes a different article for any article prescribed or ordered, or puts up a greater or less quantity of any article than that prescribed or ordered, or otherwise deviates from the terms of the prescription or order which he undertakes to follow, in consequence of which human life or health is endangered, is guilty of a misdemeanor, or if death ensues, is guilty of a felony.

See Civ. Code, secs. 1708, 3333, 3523.

An act to regulate the sale of certain poisonous substances, approved April 16, 1880; 1880, 102 (Ban. ed. 341). This act, which provides punishments for the sales of various specified poisons except under certain restrictions, will be found given in full under the head of "Poisons," post Appendix, p. 593.

§ 381. Every person who, in putting up in any bag, bale, box, barrel, or other package, any hops, cotton, wool, grain, hay, or other goods usually sold in bags, bales, boxes, barrels, or packages by weight, puts in or conceals therein anything whatever, for the purpose of increasing the weight of such bag, bale, box, barrel, or package, with intent thereby to sell the goods therein, or to enable another to sell the same, for an increased weight, is punishable by fine of not less than twenty-five dollars for each offense. [Amendment approved March 30, 1874; Amendments 1873-4, p. 432. In effect July 1, 1874.]

Act regulating sale of imitation olive oil. See post. Appendix, p. 590.

§ 382. Every person who adulterates or dilutes any article of food, drink, drug, medicine, spirituous or malt liquor, or wine, or any article useful in compounding them, with a fraudulent intent to offer the same or cause or permit it to be offered for sale as unadulterated or undiluted, and every person who fraudulently sells, or keeps or offers for sale the same, as unadulterated or undiluted, is guilty of a misdemeanor.

Acts relating to deception in sale of butter and cheese: See post, p. 587.

Act preventing sale of oleomargarine: See post, p. 587.

Adulteration, acts relating to: See post, Appendix; title Adulteration.

§ 383. Every person who knowingly sells, or keeps or offers for sale, or otherwise disposes of any article of food, drink, drug, or medicine, knowing that the same has become tainted, decayed, spoiled, or otherwise unwholesome or unfit to be eaten or drank, with intent to permit the same to be eaten or drank, is guilty of a misdemeanor.

Act relating to adulteration: See post, Appendix, title Adulteration, p. 495.

Acts relating to deception in manufacture and sale of butter and cheese: See post, Appendix, p. 516.

Acts to prevent sale of oleomargarine as butter: See post, Appendix, p. 587.

Act regulating sale of imitation olive oil: See post, Appendix, p. 590.

§ 384. Every person who willfully or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain, on any lands, is guilty of a misdemeanor.

Stats. 1852, 111, sec. 1.

Act to prevent destruction of forests: See post, Appendix, p. 552.

Act to prevent destruction by fire of property of contiguous owners: See post, Appendix, p. 553.

§ 385. Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interferes with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

Fires and firemen: See Polit. Code, secs. 3335 et seq.

§ 386. Every person who demands or receives compensation for the use of any bridge or ferry or sets up or keeps any road, bridge, ferry, or constructed ford, for the purpose of receiving any remuneration for the use of the same, without authority of law, is guilty of a misdemeanor.

Public ferries and toll-bridges: Secs. 2843 et seq., Polit. Code.

§ 387. Every person who, having entered into an undertaking to keep and attend a ferry, violates the conditions of such undertaking, is guilty of a misdemeanor.

See secs. 2850, 2854.

Undertaking by ferryman: See sec. 2850, Polit. Code.

§ 388. Every person who willfully rides or drives faster than a walk on or over any toll-bridge, lawfully licensed, is punishable by fine not exceeding twenty dollars.

Stats. 1861, 18, sec. 1.

§ 389. Every person not exempt from paying tolls, who crosses on any ferry or toll-bridge, or passes through any toll-gate, lawfully kept, without paying the toll therefor, and with intent to avoid such payment, is punishable by fine not exceeding twenty dollars.

Stats. 1861, 18, sec. 2.

§ 390. Every person in charge of a locomotive engine, who, before crossing any traveled public way, omits to cause a bell to ring or steam-whistle to sound at the distance of at least eighty rods from the crossing, and up to it, is guilty of a misdemeanor.

See Civ. Code, sec. 486.

§ 391. Every person who is intoxicated while in charge of a locomotive engine, or while acting as conductor or driver upon any railroad train or car, whether propelled by steam or drawn by horses, or while acting as train dispatcher, or as telegraph operator, receiving or transmitting dispatches in relation to the movement of trains, is guilty of a misdemeanor.

See Polit. Code, secs. 2920-2933.

§ 392. Every person who, in making up or running railroad trains, places or runs, or causes to be placed or run, any freight car in the rear of passenger cars, is guilty of a misdemeanor; and if loss of life or limb results from such placing or running, is guilty of felony. The term "freight car," as used in this section, does not include a baggage, express, or mail car.

§ 393. Every engineer, conductor, brakeman, switch-tender, or other officer, agent, or servant of any railroad company, who is guilty of any willful violation or omission of his duty as such

officer, agent or servant, whereby human life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

§ 394. Every person who willfully exposes himself or another afflicted with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner the least dangerous to the public health, is guilty of a misdemeanor.

§ 395. Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a misdemeanor.

§ 396. Every person driving any conveyance drawn by horses, upon any public road or way, who causes or suffers his horses to run, with intent to pass another conveyance, or to prevent such other from passing his own, is guilty of a misdemeanor.

§ 397. Every person who sells or furnishes, or causes to be sold or furnished, any intoxicating liquors to any habitual or common drunkard, is guilty of a misdemeanor; or who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any Indian, is punishable by imprisonment in the State prison, or in a county jail not exceeding two years, or by a fine not exceeding one thousand dollars, or both. [Amendment approved February 25, 1897; Stats. 1897, c. 31.]

See ante, sec. 306.

Act relating to sale of liquors to minors: See post, Appendix, p. 578.

§ 398. Every person who sells or furnishes to any Indian any fire-arm, or ammunition therefor, is guilty of a misdemeanor.

§ 399. If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and such animal, while so at large, or while not kept with ordinary care, kills any human being who has taken all the precautions which the circumstances permitted, or which a reasonable person would ordinarily take in the same situation, is guilty of a felony.

§ 400. Every person exhibiting the deformities of another, or his own deformities, for hire, is guilty of a misdemeanor; and every person who shall by any artificial means give to any person the appearance of a deformity, and shall exhibit such person for hire, shall be guilty of a misdemeanor. [New section approved February 4, 1874; Amendments 1873-4, p. 462. In effect immediately.]

§ 400. Every person who deliberately aids, or advises, or encourages another to commit suicide, is guilty of a felony. [New section approved March 30, 1874; Amendments 1873-4, p. 433. In effect July 1, 1874.]

§ 401. There were formerly two sections numbered 401, one passed in 1880 and one in 1878. They were renumbered in 1891 as numbers 402¼ and 402½, thus leaving no number 401.

§ 402. Any person who shall knowingly sell, or offer for sale, or use, or expose, or who shall cause or procure to be sold or offered for sale, or used, or expose any horse, mule, or other animal having the disease known as glanders or farcy, or who shall bring, or cause to be brought, or aid

in bringing into this State any sheep, hog, horse, or cattle, or any domestic animal, knowing the same to be affected with any contagious or infectious disease, shall be guilty of a misdemeanor. [Amendment approved March 10, 1891; Stats. 1891, p. 26.]

This section was originally number four hundred, but was renumbered when the above amendment was adopted.

Act to prevent spread of contagious diseases among animals: See post, Appendix, p. 513.

§ 402¼. Every person who adulterates candy by using in its manufacture terra alba or any other deleterious substances, or who sells or keeps for sale any candy or candies adulterated with terra alba or any other deleterious substance, knowing the same to be adulterated, is guilty of a misdemeanor. [Amendment approved March 10, 1891; Stats. 1891, p. 27.]

This section was originally number four hundred and one, but was renumbered when the above amendment was adopted.

§ 402½. Every animal having glanders or farcy shall at once be deprived of life by the owner or person having charge thereof, upon discovery or knowledge of its condition; and any such owner or person omitting or refusing to comply with the provisions of this section shall be guilty of a misdemeanor. [Amendment approved March 10, 1891; Stats. 1891, p. 26.]

This section was originally number four hundred and one, but was renumbered when the above amendment was adopted.

TITLE XI.

OF CRIMES AGAINST THE PUBLIC PEACE.

- § 403. Disturbance of public meetings, other than religious or political.
- § 404. "Riot" defined.
- § 405. Riot, punishment of.
- § 406. "Rout" defined.
- § 407. "Unlawful assembly" defined.
- § 408. Punishment of rout and unlawful assembly.
- § 409. Remaining present at place of riot, etc., after warning to disperse.
- § 410. Magistrates neglecting or refusing to disperse rioters.
- § 411. Consequence of resisting process after a county has been declared in a state of insurrection.
- § 412. Prize fights.
- § 413. Persons present at prize fights.
- § 414. Leaving the State to engage in prize fights.
- § 415. Disturbing the peace in night-time.
- § 416. Refusing to disperse upon lawful command.
- § 417. Exhibiting deadly weapon in rude, etc., manner, or using the same unlawfully.
- § 418. Forcible entry and detainer.
- § 419. Returning to take possession of lands after being removed by legal proceedings.
- § 420. Inciting riot. [Repealed.]

§ 403. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in sections fifty-nine and three hundred and two, is guilty of a misdemeanor.

Section 59 refers to meetings of electors.

Section 302 refers to religious meetings.

§ 404. Any use of force or violence, disturbing the public peace or any threat to use such force or violence, if accompanied by immediate power

of execution, by two or more persons acting together, and without authority of law, is a riot.

Unlawful assembly: See sec. 407.

§ 405. Every person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding two thousand dollars, or both.

§ 406. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

§ 407. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

§ 408. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Stats. 1855, 105, sec. 3.

§ 409. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

§ 410. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which

he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Stats. 1851, 216, sec. 43.

§ 411. A person who, after the publication of the proclamation authorized by section seven hundred and thirty-two, resists or aids in resisting the execution of process in any county, declared to be in a state of insurrection, or who aids or attempts the rescue or escape of another from lawful custody or confinement, or who resists, or aids in resisting any force ordered out by the Governor to quell or suppress an insurrection, is punishable by imprisonment in the State prison not less than two years.

Stats. 1851, 212, sec. 50.

See ante, sec. 148; post, 731.

§ 412. Every person who engages in, instigates, encourages, or promotes any ring or prize fight, or any other premeditated fight or contention (without deadly weapons) either as principal, aid, second, umpire, surgeon, or otherwise, is punishable by imprisonment in the State prison not exceeding two years.

Act to prohibit prize fighting: See post Appendix, p. 606.

§ 413. Every person willfully present as a spectator at any fight or contention mentioned in the preceding section, is guilty of a misdemeanor.

Stats. 1851, 216.

§ 414. Every person who leaves this State, with intent to evade any of the provisions of the last two sections, and to commit any act out of this State, such as is prohibited by them, and

who does any act which would be punishable under these provisions, if committed within this State, is punishable in the same manner as he would have been in case such act had been committed within this State.

§ 415. Every person who maliciously and willfully disturbs the peace of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight or fighting or who on the public streets of any unincorporated town, or upon the public highways in such unincorporated town, run any horse-race, either for a wager or for amusement, or fires any gun or pistol in such unincorporated town, or use any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor, and upon conviction by any court of competent jurisdiction, shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both fine and imprisonment, or either, at the discretion of the court. [Amendment approved March 20, 1878; Amendments 1877-8, p. 117. In effect March 20, 1878.]

"Maliciously" and "willfully": See ante, sec. 7, subd. 4; Id. subd. 1.

§ 416. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor.

Stats. 1850, 243.

§ 417. Every person who, not in necessary self-defense, in the presence of two or more persons, draws or exhibits any deadly weapon in a rude, angry, and threatening manner, or who, in any manner unlawfully uses the same, in any fight or quarrel, is guilty of a misdemeanor.

Stats. 1855, 268, sec. 1.

§ 418. Every person using or procuring, encouraging or assisting another to use any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.

Forcible entry and detainer: See secs. 1159 et seq.

§ 419. Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal, or officer, and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.

§ 420. Repealed. [In effect February 7, 1880.]

New section 420, relating to the uttering of language with intent to incite a riot or acts of criminal violence against person or property, approved January 19, 1878. Amendments, 1877-8, 117, was repealed by act of February 7, 1880, Amendments 1880, 1 (Ban. ed. 4); took effect from passage.

TITLE XII.

OF CRIMES AGAINST THE REVENUE AND PROPERTY OF THIS STATE.

- § 424. Embezzlement and falsification of accounts by public officers.
- § 425. Officers neglecting to pay over public moneys.
- § 426. "Public moneys," as used in the preceding section, defined.
- § 427. Failure to pay over fines and forfeitures received, a misdemeanor.
- § 428. Obstructing officer in collecting revenue.
- § 429. Refusing to give assessor list of property, or giving false name.
- § 430. Making false statements, not under oath, in reference to taxes.
- § 431. Delivering receipts for poll-taxes, other than prescribed by law, or collecting poll-taxes, etc., without giving the receipt prescribed by law.
- § 432. Having blank receipts for licenses, etc., other than those prescribed by law.
- § 433. [Repealed.]
- § 434. Refusing to give name of persons in employment, etc.
- § 435. Carrying on business without license.
- § 436. Unlawfully acting as auctioneer.
- § 437. [Repealed.]
- § 438. [Repealed.]
- § 439. Effecting insurance on account of foreign companies that have not complied with the laws of this State.
- § 440. Officer charged with collection, etc., of revenue, refusing to permit inspection of his books.
- § 441. Board of examiners, controller, and treasurer neglecting certain duties.
- § 442. Having State arms, etc.
- § 443. Selling State arms, etc.

§ 424. Each officer of this State, or of any county, city, town, or district of this State, and every other person charged with the receipt, safe-keeping, transfer, or disbursement of public moneys, who either—

1. Without authority of law, appropriates the same, or any portion thereof, to his own use, or to the use of another; or,

2. Loans the same, or any portion thereof; or, having the possession or control of any public money, makes a profit out of, or uses the same for any purpose not authorized by law; or

3. Fails to keep the same in his possession until disbursed or paid out by authority of law; or,

4. Unlawfully deposits the same, or any portion thereof, in any bank, or with any banker or other person; or,

5. Changes or converts any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or,

6. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,

7. Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or,

8. Willfully refuses or omits to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order, or warrant drawn upon such moneys by competent authority; or,

9. Willfully omits to transfer the same, when such transfer is required by law; or,

10. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same any money received by him under any duty imposed by law so to pay over the same;

—is punishable by imprisonment in the State prison for not less than one nor more than ten years, and is disqualified from holding any office in this State. [Amendment approved April 16, 1880; Amendments 1880, p. 39. In effect April 16, 1880.]

§ 425. Every officer charged with the receipt, safe-keeping, or disbursement of public moneys, who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony.

Fines to be paid over: Secs. 1457, 1570.

§ 426. The phrase "public moneys," as used in the two preceding sections, includes all bonds and evidence of indebtedness, and all moneys belonging to the State, or any city, county, town, or district therein, and all moneys, bonds, and evidences of indebtedness received or held by State, county, district, city or town officers in their official capacity.

§ 427. If any clerk, justice of the peace, sheriff, or constable, who receives any fine or forfeiture, refuses or neglects to pay over the same according to law, and within thirty days after the receipt thereof, he is guilty of a misdemeanor.

See post, secs. 1457, 1570; Stats. 1851, 212, sec. 680.

§ 428. Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this State are interested, and which such officer is by law empowered to collect, is guilty of a misdemeanor.

§ 429. Every person who unlawfully refuses, upon demand, to give to any county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to any assessor, when demanded by such assessor in the discharge of his official duties, is guilty of a misdemeanor.

See Polit. Code, secs. 3629, 3631; Stats. 1861, 419, secs. 17, 18.

§ 430. Every person who, in making any statement, not upon oath, oral, or written, which is required or authorized by law to be made, as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully states anything which he knows to be false, is guilty of a misdemeanor.

See Polit. Code, secs. 3629-3631, 3674, 3675; Stats. 1861, 419, secs. 17, 18, 68.

§ 431. Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment of any poll-tax, road-tax, or license of any kind, or who receives payment of such tax or license without delivering the receipt prescribed by law, or who inserts the name of more than one person therein, is guilty of a misdemeanor.

See Polit Code, Licenses, secs. 3356-3385; Revenues, secs. 3607-3892.

§ 432. Every person who has in his possession, with intent to circulate or sell, any blank licenses or poll-tax receipts other than those furnished by the Controller of State or County Auditor, is guilty of felony.

See Polit Code, secs. 3839-3845.

§ 433. [Was repealed by an act entitled "An Act to amend and in relation to The Political Civil, and Penal Codes, and the Code of Civil Procedure," approved April first, eighteen hundred and seventy-two, now on file in the office of the Secretary of State.]

§ 434. Every person who, when requested by the collector of taxes or licenses, refuses to give to such collector the name and residence of each man in his employment, or to give such collector

access to the building or place where such men are employed, is guilty of a misdemeanor.

See Polit. Code, secs. 3848-3850.

§ 435. Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law of this State, without taking out or procuring the license prescribed by such law, is guilty of a misdemeanor.

License Law of April 12, 1880. See Polit Code, Licenses, secs. 3356-3386.

§ 436. Every person who acts as an auctioneer in violation of the laws of this State relating to auctions and auctioneers, is guilty of a misdemeanor.

See Polit. Code, secs. 3284-3292, 3376.

§ 437. [Repealed by Act of April first, eighteen hundred and seventy-two.]

§ 438. [Repealed by Act of April first, eighteen hundred and seventy-two.]

§ 439. Every person who in this State procures, or agrees to procure, any insurance for a resident of this State, from any insurance company not incorporated under the laws of this State, unless such company or its agent has filed the bond required by the laws of this State relating to insurance, is guilty of a misdemeanor.

Bonds from foreign corporations: Polit. Code, sec. 623.

§ 440. Every officer charged with the collection, receipt, or disbursement of any portion of the revenue of this State, who, upon demand, fails or refuses to permit the Controller or Attor-

ney General to inspect his books, papers, receipts, and records pertaining to his office, is guilty of a misdemeanor.

Stats. 1852, 57, sec. 2.

§ 441. Every member of the board of examiners, and every Controller or State Treasurer, who violates any of the provisions of the laws of this State relating to the board of examiners, or prescribing its powers and duties, is guilty of a felony.

Board of examiners: Polit. Code, secs. 654 et seq.

§ 442. Every person who unlawfully retains in his possession any arms, equipments, clothing, or military stores belonging to the State, or the property of any company of the State militia, is guilty of a misdemeanor.

Stats. 1866, 735, sec. 50.

See Polit. Code, secs. 1963-1968.

§ 443. Every member of the State militia who unlawfully disposes of any arms, equipments, clothing, or military stores, the property of this State, or of any company of the State militia, is guilty of a misdemeanor.

TITLE XIII.

OF CRIMES AGAINST PROPERTY.

Chapter I. Arson, §§ 447-55.

II. Burglary and Housebreaking, §§ 459-63.

III. Having possession of Burglarious Instruments and Deadly Weapons, §§ 466-7.

IV. Forgery and Counterfeiting, §§ 470-82.

V. Larceny, §§ 484-502.

VI. Embezzlement, §§ 503-14.

VII. Extortion, §§ 518-25.

VIII. False Personation and Cheats, §§ 528-36.

IX. Fraudulently fitting out and Destroying Vessels, §§ 539-41.

X. Fraudulently Keeping possession of Wrecked Property, §§ 544-5.

XI. Fraudulent destruction of Property Insured, §§ 548-9.

XII. False Weights and Measures, §§ 552-5.

XIII. Fraudulent Insolvencies by Corporations, and other Frauds in their Management, §§ 557-72.

XIV. Fraudulent issue of Documents of Title to Merchandise, §§ 577-83.

XV. Malicious Injuries to Railroad Bridges, Highways, Bridges, and Telegraphs, §§ 587-92.

CHAPTER I.

ARSON.

- § 447. Arson defined.
- § 448. "Building" defined.
- § 449. "Inhabited building" defined.
- § 450. "Night-time" defined.
- § 451. "Burning" defined.
- § 452. Ownership of the building.
- § 453. Degrees of arson.
- § 454. Arson of the first degree. Arson of the second degree.
- § 455. Punishment of arson.

§ 447. Arson is the willful and malicious burning of a building with intent to destroy it.

Burning insured property: Sec. 548.

§ 448. Any house, edifice, structure, vessel, or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted is a "building" within the meaning of this chapter.

§ 449. Any building which has usually been occupied by any person lodging therein at night is an "inhabited building," within the meaning of this chapter.

§ 450. The phrase "night-time," as used in this chapter, means the period between sunset and sunrise.

See sec. 463.

§ 451. To constitute a burning, within the meaning of this chapter, it is not necessary that the building set on fire should have been destroyed. It is sufficient that fire is applied so as to take effect upon any part of the substance of the building.

§ 452. To constitute arson it is not necessary that a person other than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in possession of, or was actually occupying such building, or any part thereof.

§ 453. Arson is divided into two degrees.

§ 454. Maliciously burning in the night-time an inhabited building in which there is at the time some human being, is arson in the first degree. All other kinds of arson are of the second degree.

An act of April 1, 1872, Stats. 1871-2, 895, defining arson in the second degree, was superseded by the above section.

Setting on fire of woods, prairies, grasses, or grain, on any lands, see ante, sec. 384.

§ 455. Arson is punishable by imprisonment in the State prison, as follows:

1. Arson in the first degree, for not less than two years.

2. Arson in the second degree, for not less than one nor more than ten years.

CHAPTER II.

BURGLARY AND HOUSEBREAKING.

§ 459. "Burglary" defined.

§ 460. Punishment of burglary.

§ 461. "Housebreaking" defined.

§ 462. Punishment of housebreaking.

§ 463. "Night-time" defined.

§ 459. Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent,

vessel, or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary. [Amendment approved February 9, 1876; Amendments 1875-6, p. 111. In effect May 1, 1876.]

§ 460. Every burglary committed in the night-time is burglary in the first degree, and every burglary committed in the day-time is burglary of the second degree. [Amendment approved February 9, 1876; Amendments 1875-6, p. 111. In effect May 1, 1876.]

§ 461. Burglary of the first degree is punishable by imprisonment in the State prison for not less than one nor more than fifteen years. Burglary of the second degree is punishable by imprisonment in the State prison for not more than five years. [Amendment approved February 9, 1876; Amendments 1875-6, p. 111. In effect May 1, 1876.]

§ 462. Section four hundred and sixty-two of the Penal Code is repealed. [Approved February 9. In effect May 1, 1876.]

Section 462 was repealed by act approved February 9, 1876; Amendments 1875-6, 111; took effect from twelve o'clock noon, May 1, 1876.

An Act to amend sections four hundred and fifty-nine, four hundred and sixty, and four hundred and sixty-one, and to repeal section four hundred and sixty-two of the Penal Code.

[Approved February 9, 1876; Amendments 1875-6, 111.]

Sections 1, 2, 3, and 4 contain the amendments to sections 459, 460, and 461, and the repeal of section 462 above inserted or indicated.

Sec. 5. Nothing in this act shall affect any act committed or verdict or judgment rendered or entered before it takes effect, but all acts committed

before it takes effect shall be inquired of, prosecuted, and punished in the same manner as if this act had not been passed.

Sec. 6. This act shall be in force from and after twelve o'clock, noon, on the first day of May, eighteen hundred and seventy-six.

§ 463. The phrase "night time," as used in this chapter means the period between sunset and sunrise.

CHAPTER III.

HAVING POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS.

§ 466. Possession of burglarious instruments.

§ 467. Having possession of deadly weapons.

§ 466. Every person having upon him, or in his possession, a picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break or enter into any building, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named, so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing, or having reason to believe, that it is intended to be used in committing a misdemeanor or felony, is guilty of misdemeanor. Any of the structures mentioned in section four hundred and fifty-nine of this Code, shall be deemed to be a building within the meaning of this section. [Amendment approved March 3, 1874; Amendments 1873-4, p. 463. In effect March 3, 1874.]

§ 467. Every person having upon him any deadly weapon with intent to assault another, is guilty of a misdemeanor.

CHAPTER IV.

FORGERY AND COUNTERFEITING.

- § 470. Forgery of wills, conveyances, etc.
- § 471. Making false entries in records or returns.
- § 472. Forgery of public and corporate seals.
- § 473. Punishment of forgery.
- § 474. Forging telegraphic messages.
- § 475. Passing or receiving forged notes.
- § 476. Making, passing, or uttering fictitious bills, etc.
- § 477. Counterfeiting coin, bullion, etc.
- § 478. Punishment of counterfeiting.
- § 479. Possessing or receiving counterfeit coin, bullion, etc.
- § 480. Making or possessing counterfeit dies or plates.
- § 481. Counterfeiting railroad ticket, etc.
- § 482. Restoring canceled tickets.

§ 470. Every person who, with intent to defraud another, falsely makes, alters, forges, or counterfeits any charter, letters, patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, bank-bill or note, post-note, check, draft, bill of exchange, contract, promissory note, due-bill for the payment of money or property, receipt for money or property, passage ticket, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release, or discharge for any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificates of shares of stock, goods, chattels, or other property whatever or any letter of attorney, or other power

to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order or assignment of any bonds, writing obligatory, or promissory note for money or other property, or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice, damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

Forgery of records: See sec. 471.

§ 471. Every person who, with intent to defraud another, makes, forges, or alters any entry in any book of records, or any instrument purporting to be any record or return specified in the preceding section, is guilty of forgery.

Forgery of records: See sec. 470.

§ 472. Every person who, with intent to defraud another, forges or counterfeits the seal of this State, the seal of any public officer authorized by law, the seal of any court of record, or the seal of any corporation, or any other public seal authorized or recognized by the laws of this State, or of any other State, government, or country, or who falsely makes, forges, or counterfeits any impression purporting to be an impression of any such

seal, or who has in his possession any such counterfeited seal, or impression thereof, knowing it to be counterfeited, and willfully conceals the same, is guilty of forgery.

§ 473. Forgery is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

§ 474. Every person who knowingly and willfully sends by telegraph to any person a false or forged message, purporting to be from such telegraph office, or from any other person, or who willfully delivers or causes to be delivered to any person any such message falsely purporting to have been received by telegraph, or who furnishes, or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph, or to be delivered, any such message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment.

§ 475. Every person who has in his possession, or receives from another person, any forged promissory note or bank-bill, or bills for the payment of money or property, with the intention to pass the same or to permit, cause, or procure the same to be uttered or passed, with the intention to defraud any person knowing the same to be forged or counterfeited, or has or keeps in his possession any blank or unfinished note or bank-bill made in the form or similltude of any promissory note or bill for payment of money or property, made to be issued by any incorporated bank or banking company, with intention to fill up and complete such blank and unfinished note or bill, or to permit, or

cause, or procure the same to be filled up and completed, in order to utter or pass the same, or to permit, or cause, or procure the same to be uttered or passed, to defraud any person, is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

§ 476. Every person who makes, passes, utters, or publishes, with intention to defraud any other person, or who, with the like intention, attempts to pass, utter, or publish, or who has in his possession, with like intent to utter, pass, or publish, any fictitious bill, note, or check, purporting to be the bill, note, or check or other instrument in writing for the payment of money or property of some bank, corporation, copartnership, or individual, when, in fact, there is no such bank, corporation, copartnership, or individual in existence, knowing the bill, note, check, or instrument in writing to be fictitious, is punishable by imprisonment in the State prison for not less than one nor more than fourteen years.

§ 477. Every person who counterfeits any of the species of gold or silver coin current in this State, or any kind or species of gold-dust, gold or silver bullion, or bars, lumps, pieces, or nuggets, or who sells, passes, or gives in payment such counterfeit coin, dust, bullion, bars lumps, pieces, or nuggets, or permits, causes or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeited, is guilty of counterfeiting.

§ 478. Counterfeiting is punishable by imprisonment in the State prison for not less than one, nor more than fourteen years.

§ 479. Every person who has in his possession, or receives for any other person, any coun-

terfeit gold or silver coin of the species current in this State, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces, or nuggets, with the intention to sell, utter, put off, or pass the same, or permits, causes, or procures the same to be sold, uttered, or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment in the State prison not less than one nor more than fourteen years.

§ 480. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this State, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the State prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed.

§ 481. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad company, or any lessee thereof, or any other person, is punishable by imprisonment in the State prison, or in the county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such imprisonment and fine. [New section approved March 30, 1874; Amendments 1873-4, p. 433. In effect July 1, 1874.]

§ 482. Every person who, for the purpose of restoring to its original appearance and nominal value in whole or in part, removes, conceals, fills up, or obliterates, the cuts, marks, punch-holes, or other evidence of cancellation, from any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad company, or any lessee or manager thereof, canceled in whole or in part, with intent to dispose of by sale or gift, or to circulate the same, or with intent to defraud the railroad company, or lessees thereof, or any other person, or who, with like intent to defraud, offers for sale, or in payment of fare on the railroad of the company, such ticket, check, order, coupon, or pass, knowing the same to have been so restored, in whole or in part, is punishable by imprisonment in the county jail, not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such imprisonment and fine. [New section approved March 30, 1874; Amendments 1873-4, p. 433. In effect July 1, 1874.]

CHAPTER V.

LARCENY.

- § 484. "Larceny" defined.
- § 485. Larceny of lost property.
- § 486. Grand and petit larceny.
- § 487. Grand larceny defined.
- § 488. Petit larceny.
- § 489. Punishment of grand larceny.
- § 490. Punishment of petit larceny.
- § 491. Dogs property.
- § 492. Larceny of written instruments.
- § 493. Value of passage tickets.
- § 494. Written instruments completed but not delivered.
- § 495. Severing and removing part of the realty.
- § 496. Receiver of stolen property.
- § 497. Larceny, and receiving stolen property out of the State.
- § 498. Stealing gas.
- § 499. Stealing water.
- § 500. Larceny of goods saved from fire in San Francisco.
- § 501. Purchasing or receiving in pledge junk, etc.
- § 502. Applies §§ 339, 342, and 343 to junk dealers.
- § 502½. Removal of mortgaged property.

§ 484. Larceny is the felonious stealing, taking, carrying, leading, or driving away the personal property of another.

See post, sec. 505.

Embezzlement: Secs. 503, 508.

Act to more fully define larceny, see post Appendix, p. 582.

Act to punish stealing gold dust, amalgam, or quicksilver: See post, Appendix.

§ 485. One who finds lost property, under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto,

without first making reasonable and just efforts to find the owner and restore the property to him, is guilty of larceny.

Lost and unclaimed property: See Pol. Code, secs. 3136-3157; Civ. Code, secs. 1864-1872.

§ 486. Larceny is divided into two degrees, the first of which is termed grand larceny; the second, petit larceny.

§ 487. Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of a value exceeding fifty dollars.

2. When the property is taken from the person of another.

3. When the property taken is a horse, mare, gelding, cow, steer, bull, calf, mule, jack, or jenny. [Amendment approved March 9, 1895; Stats. 1895, p. 35. In effect in sixty days.]

See ante, sec. 211.

Larceny defined: See sec. 484.

§ 488. Larceny in other cases is petit larceny.

§ 489. Grand larceny is punishable by imprisonment in the State prison for not less than one nor more than ten years.

§ 490. Petit larceny is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or both.

See ante, Constitutional Provisions, art. 1, sec. 16.

§ 491. Dogs are personal property, and their value is to be ascertained in the same manner as the value of other property. [Amendment ap-

proved March 15, 1887; Stats. 1887, p. 131. In effect March 15, 1887.]

See post, Malicious Mischief, sec. 597.

§ 492. If the thing stolen consists of any evidence of debt, or other written instrument, the amount of money due thereupon, or secured to be paid thereby, and remaining unsatisfied, or which in any contingency might be collected thereon, or the value of the property the title to which is shown thereby, or the sum which might be recovered in the absence thereof, is the value of the thing stolen.

§ 493. If the thing stolen is any ticket or other paper or writing entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railroad or vessel or other public conveyance, the price at which tickets entitling a person to a like passage are usually sold by the proprietors of such conveyance is the value of such ticket, paper, or writing.

§ 494. All the provisions of this chapter apply where the property taken is an instrument for the payment of money, evidence of debt, public security, or passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the makers thereof to any person as a purchaser or owner.

Embezzlement of evidence of debt: Sec. 510.

§ 495. The provisions of this chapter apply where the thing taken is any fixture or part of the realty, and is severed at the time of the taking, in the same manner as if the thing had been severed by another person at some previous time.

Although outstanding crops are part of the realty, they are subjects of larceny: See post, secs. 971, 972.

Act to punish stealing from mining claim, etc.: See post, Appendix, p. 582.

Severing personalty from realty: See post, Appendix, p. 582.

§ 496. Every person who for his own gain, or to prevent the owner from again possessing his property, buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding six months, or by both; and it shall be presumptive evidence that such property was stolen, if the same consists of jewelry, silver, or plated ware, or articles of personal ornament, if purchased or received from a person under the age of eighteen, unless said property is sold by said minor at a fixed place of business carried on by said minor or his employer. [Amendment approved February 28, 1874; Amendments 1873-4, p. 464. In effect February 28, 1874.]

See secs. 971, 972, post.

§ 497. Every person who, in another State or county, steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this State, may be convicted and punished in the same manner as if such larceny or receiving had been committed in this State.

§ 498. Every person who, with intent to injure or defraud, makes or causes to be made any pipe, tube, or other instrument, and connects the same, or causes it to be connected, with any main, service-pipe, or other pipe for conducting or supplying illuminating gas, in such manner as to supply illuminating gas to any burner or orifice, by or at which illuminating gas is consumed, around or without passing through the meter provided

for the measuring and registering the quantity consumed, or in any other manner so as to evade payment therefor, and every person who, with like intent, injures or alters any gas meter or obstructs its action, is guilty of a misdemeanor.

§ 499. Every person who, with intent to injure or defraud, connects, or causes to be connected, any pipe, tube, or other instrument, with any main, service-pipe, or other pipe, or conduit, or flume for conducting water, for the purpose of taking water from such main, service-pipe, conduit, or flume, without the knowledge of the owner thereof, and with intent to evade payment therefor, is guilty of a misdemeanor.

§ 500. Every person who, in the city and county of San Francisco, saves from fire, or from a building endangered by fire, any property, and for two days thereafter corruptly neglects to notify the owner or fire marshal thereof, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

See Pol. Code, sec. 3343.

§ 501. Every person who purchases or receives in pledge, or by way of mortgage, from any person under the age of sixteen years, any junk, metal, mechanical tools, or implements, is guilty of a misdemeanor. [New section approved March 28, 1872; Amendments 1871-2, p. 684. Took effect with the Code.]

§ 502. Sections three hundred and thirty-nine, three hundred and forty-two, and three hundred and forty-three of the Penal Code are applicable to persons carrying on the business of junk dealers, and apply to their transactions of purchase and sale, as well as to those of pledge or mortgage. [New section approved March 28, 1872;

Amendments 1871-2, p. 684; took effect with the code.]

§ 502½. Every person who, after mortgaging any real property, and during the existence of such mortgage, or after such mortgaged property shall have been sold under an order and decree of foreclosure, and with intent to defraud or injure the mortgagee, his representatives, successors, or assigns, or the purchaser of such mortgaged premises at such foreclosure sale, his representatives or assigns, takes, removes, or carries away from such mortgaged premises, or otherwise disposes of, or permits the taking, removing, or carrying away, or otherwise disposing of, any house, barn, windmill, or water-tank, upon or affixed to such premises as an improvement thereon, without the written consent of the mortgagee, his representatives, successors, or assigns, or the purchaser at such foreclosure sale, his representatives or assigns, is guilty of larceny and shall be punished accordingly. [New section approved March 26, 1895; Stats. 1895, p. 77. In effect March 26, 1895.]

See post, sec. 538, in the case of chattel mortgage.

CHAPTER VI.

EMBEZZLEMENT.

- § 503. "Embezzlement" defined.
- § 504. When officer, etc., guilty of embezzlement.
- § 505. Carrier, when guilty of embezzlement.
- § 506. When trustee, banker, etc., guilty of embezzlement.
- § 507. When bailee, tenant, or lodger guilty of embezzlement.
- § 508. When clerk, agent, or servant guilty of embezzlement.
- § 509. Distinct act of taking.
- § 510. Evidence of debt undelivered a subject of embezzlement.
- § 511. Claim of title a ground of defense.
- § 512. Intent to restore the property is no defense.
- § 513. Actual restoration a ground for mitigation of punishment.
- § 514. Punishment for embezzlement.

§ 503. Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.

See ante, secs. 211, 425, 484, and notes.

§ 504. Every officer of this State, or of any county, city, city and county, or other municipal corporation or subdivision thereof, and every deputy, clerk, or servant of any such officer, and every officer, director, trustee, clerk, servant, or agent of any association, society, or corporation, (public or private) who fraudulently appropriates to any use or purpose not in the due and lawful execution of his trust, any property which he has in his possession or under his control by virtue of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement. [Amendment approved April 6, 1880; Amendments 1880, p. 8. In effect April 6, 1880.]

Corporate body: See ante, sec. 424; and post, sec. 514.

§ 505. Every carrier or other person having under his control personal property for the purpose of transportation for hire, who fraudulently appropriates it to any use or purpose, inconsistent with the safe-keeping of such property and its transportation according to his trust, is guilty of embezzlement, whether he has broken the package in which such property is contained, or has otherwise separated the items thereof, or not.

§ 506. Every trustee, banker, merchant, broker, attorney, agent, assignee in trust, executor, administrator, or collector, or person otherwise intrusted with or having in his control property for the use of any other person, who fraudulently appropriates it to any use or purpose not in the due and lawful execution of his trust, or secretes it with a fraudulent intent to appropriate it to such use or purpose, is guilty of embezzlement.

§ 507. Every person intrusted with any property as bailee, tenant, or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same or the proceeds thereof to his own use, or secretes it or them with a fraudulent intent to convert to his own use, is guilty of embezzlement.

§ 508. Every clerk, agent, or servant of any person who fraudulently appropriates to his own use, or secretes with a fraudulent intent to appropriate to his own use, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant, is guilty of embezzlement.

Embezzlement: See secs. 503, 507.

§ 509. A distinct act of taking is not necessary to constitute embezzlement.

Embezzlement and larceny distinguished: See sec. 484.

· § 510. Any evidence of debt, negotiable by delivery only, and actually executed, is the subject of embezzlement, whether it has been delivered or issued as a valid instrument or not.

See also sec. 494, ante.

§ 511. Upon any indictment for embezzlement, it is a sufficient defense that the property was appropriated openly and avowedly, and under a claim of title preferred in good faith, even though such claim is untenable. But this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against him.

§ 512. The fact that the accused intended to restore the property embezzled, is no ground of defense or of mitigation of punishment, if it has not been restored before an information has been laid before a magistrate, charging the commission of the offense.

§ 513. Whenever, prior to any information laid before a magistrate, charging the commission of embezzlement, the person accused voluntarily and actually restored or tendered restoration of the property alleged to have been embezzled, or any part thereof, such fact is not a ground of defense, but it authorizes the court to mitigate punishment, in its discretion.

Compromise by permission of court discharges prisoner, when: Sec. 1378, post.

§ 514. Every person guilty of embezzlement is punishable in the manner prescribed for feloniously stealing property of the value of that embezzled; and where the property embezzled is an evidence of debt or right of action, the sum due upon it or secured to be paid by it shall be taken as

its value; provided, that if the embezzlement or defalcation be of the public funds of the United States, or of this State, or of any county, city and county, or municipality within this State, the offense is a felony, and shall be punishable by imprisonment in the State prison not less than one year nor more than ten years; and the person so convicted shall be ineligible thereafter to any office of honor, trust, or profit under this State. [Amendment approved April 6, 1880; Amendments 1880, p. 8. In effect April 6, 1880.]

Embezzlement of public funds.—“No person convicted of the embezzlement or defalcation of the public funds of the United States, or of any state, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this state, and the legislature shall provide by law for the punishment of embezzlement or defalcation as a felony”: Const. Cal., art. 4, sec. 21.

CHAPTER VII.

EXTORTION.

- § 518. “Extortion” defined.
- § 519. What threats may constitute extortion.
- § 520. Punishment of extortion in certain cases.
- § 521. Extortion committed under color of official right.
- § 522. Obtaining signature by means of threats.
- § 523. Sending threatening letters with intent to extort.
- § 524. Attempts to extort by means of verbal threats.
- § 525. Officers of railroad companies making overcharges.

§ 518. Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right.

See ante, 211, 484, 503.

§ 519. Fear, such as will constitute extortion, may be induced by a threat, either;

1. To do an unlawful injury to the person or property of the individual threatened, or to any relative of his, or member of his family; or,

2. To accuse him, or any relative of his or member of his family, of any crime; or,

3. To expose, or impute to him or them any deformity or disgrace; or,

4. To expose any secret affecting him or them.

Extortion.—Subd. 1. Injury to property: See sec. 523.

§ 520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery, by means of force, or any threat, such as is mentioned in the preceding section, is punishable by imprisonment in the State prison not exceeding five years.

Robbery: Sec. 211.

§ 521. Every person who commits any extortion under color of official right, in cases for which a different punishment is not prescribed in this Code, is guilty of a misdemeanor.

See ante, sec. 518.

§ 522. Every person who, by any extortionate means, obtains from another his signature to any paper or instrument, whereby, if such signature were freely given, any property would be transferred, or any debt, demand, charge, or right of action created, is punishable in the same manner as if the actual delivery of such debt, demand, charge, or right of action, were obtained.

§ 523. Every person who, with intent to extort any money or other property from another, sends or delivers to any person any letter or other writ-

ing, whether subscribed or not, expressing or implying, or adapted to imply, any threat such as is specified in section five hundred and nineteen, is punishable in the same manner as if such money or property were actually obtained by means of such threat.

Offense, when complete: Sec. 660.

§ 524. Every person who unsuccessfully attempts, by means of any verbal threat, such as is specified in section five hundred and nineteen, to extort money or other property from another, is guilty of a misdemeanor.

§ 525. Every officer, agent, or employee of a railroad company, who asks or receives a greater sum than is allowed by law for the carriage of passengers or freight, is guilty of a misdemeanor.

See Civ. Code, secs. 489, 2174, 2168, 2180-2191, 2194-2203.

CHAPTER VIII.

FALSE PERSONATION AND CHEATS.

- § 528. Marrying under false personation.
- § 529. Falsely personating another in other cases.
- § 530. Receiving property in a false character.
- § 531. Fraudulent conveyances.
- § 532. Obtaining money by false pretenses.
- § 533. Selling land twice.
- § 534. Married person selling lands under false representations.
- § 535. Mock auction.
- § 536. Consignee, false statement by.
- § 537. Defrauding inn or boarding-house.
- § 537. Removal of mortgaged chattels.
- § 537½. Fraudulent registration of cattle.
- § 538. Further incumbrance or sale.
- § 538½. Misrepresentation of newspaper circulation.

§ 528. Every person who falsely personates another, and in such assumed character marries or pretends to marry, or to sustain the marriage relation towards another, with or without the connivance of such other, is guilty of a felony.

A mere promise of marriage is not sufficient: See Civil Code, sec. 58.

§ 529. Every person who falsely personates another, and in such assumed character, either—

1. Becomes bail or surety for any party in any proceeding whatever, before any court or officer authorized to take such bail or surety; or,

2. Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, and used as true; or,

3. Does any other act whereby, if it were done by the person falsely personated, he might, in any event, become liable to any suit or prosecution, or to pay any sum of money, or to incur any charge,

forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person;

—is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding five thousand dollars.

§ 530. Every person who falsely personates another, and in such assumed character receives any money or property, knowing that it is intended to be delivered to the individual so personated, with intent to convert the same to his own use, or to that of another person, or to deprive the true owner thereof, is punishable in the same manner and to the same extent as for larceny of the money or property so received.

§ 531. Every person who is a party to any fraudulent conveyance of any lands, tenements, or hereditaments, goods, or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment, or execution, contract or conveyance, had, made, or contrived, with intent to deceive and defraud others, or to defeat, hinder, or delay creditors or others of their just debts, damages, or demands; or who, being a party as aforesaid, at any time wittingly and willingly puts in, uses, avows, maintains, justifies, or defends the same, or any of them, as true, and done, had, or made in good faith, or upon good consideration, or aliens, assigns, or sells any of the lands, tenements, hereditaments, goods, chattels, or other things before mentioned, to him or them conveyed as aforesaid, or any part thereof, is guilty of a misdemeanor.

Fraud.—Actual fraud is defined by section 1572, and constructive fraud by section 1573, Civ. Code.

Fraudulent conveyances: Civ. Code, secs. 3439-3442.

§ 532. Every person who knowingly and designedly, by false or fraudulent representation or pretenses, defrauds any other person of money or property, or who causes or procures others to report falsely of his wealth or mercantile character, and by thus imposing upon any person obtains credit, and thereby fraudulently gets into possession of money or property, is punishable in the same manner and to the same extent as for larceny of the money or property so obtained. [In effect February 15, 1889.]

§ 533. Every person who, after once selling, bartering, or disposing of any tract of land or town lot, or, after executing any bond or agreement for the sale of any land or town lot, again willfully and with intent to defraud previous or subsequent purchasers, sells, barter, or disposes of the same tract of land or town lot, or any part thereof, or willfully and with intent to defraud previous or subsequent purchasers, executes any bond or agreement to sell, barter, or dispose of the same land or lot, or any part thereof, to any other person for a valuable consideration, is punishable by imprisonment in the State prison not less than one nor more than ten years.

§ 534. Every married person who falsely and fraudulently represents himself or herself as competent to sell or mortgage any real estate, to the validity of which sale or mortgage the assent or concurrence of his wife or her husband is necessary, and under such representations willfully conveys or mortgages the same, is guilty of felony.

§ 535. Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery by means of any false or fraudulent sale of property or pretended

property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the State prison not exceeding three years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and, in addition thereto, forfeits any license he may hold as auctioneer, and is forever disqualified from receiving a license to act as auctioneer within this State.

See Pol. Code, sec. 3284.

§ 536. Every commission merchant, broker, agent, factor, or consignee, who shall willfully and corruptly make, or cause to be made, to the principal or consignor of such commission merchant, agent, banker, factor, or consignee, a false statement concerning the price obtained for or the quality or quantity of any property consigned or intrusted to such commission merchant, agent, broker, factor, or consignee, for sale, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment. [New section approved April 15, 1880; Amendments 1880, p. 37. In effect April 15, 1880.]

§ 537. Any person who obtains any food or accommodation at an inn or boarding house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn or boarding house by the use of any false pretense, or who, after obtaining credit or accommodation at any inn or boarding house, absconds and surreptitiously removes his baggage therefrom without paying for his food or accommodations, is guilty of a misdemeanor. [New section approved March 1, 1889; Stats. 1889, p. 44.]

§ 537. Every person who, after mortgaging any of the property mentioned in section two thousand nine hundred and fifty-five of the Civil Code, excepting locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such mortgage, with the intent to defraud the mortgagee, his representatives or assigns, transfers, sells, takes, drives, or carries away, or otherwise disposes of, or permits the transferring, selling, taking, driving, or carrying away, or otherwise disposing of such mortgaged property, or any part thereof, from the county where it was situated at the time it was mortgaged, without the written consent of the mortgagee, is guilty of larceny, and shall be punished accordingly. [Amendment approved March 9, 1893; Stats. 1893, p. 119. In effect immediately.]

§ 537½. Every person who shall, by any false or fraudulent pretense, obtain from any club, association, society or company organized for the purpose of improving the breed of cattle, horses, sheep, swine, or other domestic animals, a certificate of registration of any animal in the Herd register, or any other register of any such club, association, society, or company, or a transfer of any such registration; and any person who shall, for a legal consideration, give a false pedigree of any animal, with intent to mislead, shall be guilty of a misdemeanor.

Sec. 2. Every person willfully advertising any of such animals for purposes of copulation or profit, as having a pedigree other than the true pedigree of such animal, shall forfeit all right by law to collect pay for the services of said animal. [New section approved February 25, 1889; Stats. 1889, p. 35. In effect February 25, 1889.]

§ 538. Every person who, after mortgaging any of the property mentioned in section two

thousand nine hundred and fifty-five of the Civil Code, excepting locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of such mortgage, sells, transfers, or in any manner further encumbers the said mortgaged property, or any part thereof, or causes the same to be sold, transferred, or further encumbered, is guilty of larceny, and shall be punished accordingly; unless at or before the time of making such sale, transfer, or encumbrance, such mortgagor shall inform the person to whom such sale, transfer, or encumbrance may be made, of the existence of the prior mortgage, and shall inform the prior mortgagee of the intended sale, transfer, or encumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or encumbrance is to be made. [New section added March 9, 1893; Stats. 1893, p. 120. In effect immediately.]

In the case of real property: See ante, sec. 502½.

§ 538½. Every proprietor or publisher of any newspaper or periodical who shall willfully and knowingly misrepresent the circulation of such newspaper or periodical, for the purpose of securing advertising or other patronage, shall be deemed guilty of a misdemeanor. [New section added March 11, 1893; Stats. 1893, p. 132. In effect immediately.]

CHAPTER IX.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 539. Captain or other officer willfully destroying vessel, etc.

§ 540. Other person willfully destroying vessel, etc.

§ 541. Making false manifest, etc.

§ 539. Every captain or other officer or person in command or charge of any vessel, who, within this State, willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk, or otherwise injured or destroyed, with intent to prejudice or defraud any other person, is punishable by imprisonment in the State prison not less than three years.

§ 540. Every person, other than such as are embraced within the last section, who is guilty of any act therein specified, is punishable by imprisonment in the State prison for a term not exceeding ten years.

§ 541. Every person guilty of preparing, making, or subscribing any false or fraudulent manifest, invoice, bill of lading, ship's register, or protest, with intent to defraud another, is punishable by imprisonment in the State prison not exceeding three years.

CHAPTER X.

FRAUDULENTLY KEEPING POSSESSION OF WRECKED PROPERTY.

§ 544. Detaining wrecked property after salvage paid.

§ 545. Unlawful taking of wrecked property.

§ 544. Every person who keeps any wrecked property, or the proceeds thereof, after the salvage and expenses chargeable thereon have been agreed to or adjusted, and the amount thereof has been paid to him, is punishable by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or both.

Stats. 1850, 173, sec. 24.

Wrecks and wrecked property: Pol. Code, secs. 2403-2418.

§ 545. Every person who takes away any goods from any stranded vessel, or any goods cast by the sea upon the land, or found in any bay or creek, or knowingly has in his possession any goods so taken or found, and does not deliver the same to the sheriff of the county where they were found, or notify him of his readiness to do so, within thirty days after the same have been taken by him, or have come into his possession, is guilty of a misdemeanor.

Stats. 1850, 173, sec. 25.

Wrecks and wrecked property: Pol. Code, secs. 2403-2418.

CHAPTER XI.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 548. Burning or destroying property insured.

§ 549. Presenting false proofs upon policy of insurance.

§ 548. Every person who willfully burns or in any other manner injures or destroys any property which is at the time insured against loss or damage by fire, or by any other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of or in possession of such person, or of any other, is punishable by imprisonment in the State prison not less than one nor more than ten years.

See Civ. Code, secs. 2527-2531.

Burning insured property.—This section takes the place of section 7 of the act of April 19, 1856, Stats. 1856, 132, and includes every injury to property insured.

Arson: See sec. 447.

§ 549. Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes, or subscribes any account, certificate of survey, affidavit, or proof of loss, or other book, paper, or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the State prison not exceeding three years, or by fine not exceeding one thousand dollars, or by both.

See Civ. Code, secs. 2633-2637.

CHAPTER XII.

FALSE WEIGHTS AND MEASURES.

§ 552. "False weight" and "measure" defined.

§ 553. Using false weights or measures.

§ 554. Stamping false weight, etc., on casks or packages.

§ 555. Weight by the ton or pound.

§ 552. A false weight or measure is one which does not conform to the standard established by the laws of the United States of America.

Weights and measures: See Pol. Code, secs. 3209-3223.

§ 553. Every person who uses any weight or measure, knowing it to be false, by which use another is defrauded or otherwise injured, is guilty of a misdemeanor.

§ 554. Every person who knowingly marks or stamps false or short weight or measure, or false tare, on any cask or package, or knowingly sells or offers for sale, any cask or package so marked, is guilty of a misdemeanor.

§ 555. In all sales of coal, hay, and other commodities, usually sold by the ton or fractional parts thereof, the seller must give to the purchaser full weight, at the rate of two thousand pounds to the ton; and in all sales of articles which are sold in commerce by avoirdupois weight, the seller must give to the purchaser full weight, at the rate of sixteen ounces to the pound; and any person violating this section is guilty of a misdemeanor. [New section approved February 15, 1876; Amendments 1875-6, p. 112. In effect in sixty days.]

CHAPTER XIII.

FRAUDULENT INSOLVENCIES BY CORPORATIONS,
AND OTHER FRAUDS IN THEIR MANAGEMENT.

- § 557. Frauds in subscriptions for stock of corporations.
- § 558. Frauds in procuring organization, etc., of corporation.
- § 559. Unauthorized use of names in prospectus, etc.
- § 560. Misconduct of directors of stock corporations.
- § 561. Savings-bank officer overdrawing his account.
- § 532. Receiving deposits in insolvent banks.
- § 563. Frauds in keeping accounts in books of corporations.
- § 564. Officer of corporation publishing false reports.
- § 565. Officer of corporation to permit an inspection.
- § 566. Officer of railroad company contracting debt in its behalf exceeding its available means.
- § 567. Debt contracted in violation of last section not invalid.
- § 568. Director of a corporation presumed to have knowledge of its affairs.
- § 569. Director present at meeting, when presumed to have assented to proceedings.
- § 570. Director absent from meeting, when presumed to have assented to proceedings.
- § 571. Foreign corporations.
- § 572. "Director" defined.

§ 557. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

Subscription to articles of incorporation: Civ. Code, sec. 292.

Subscription to capital stock: Civ. Code, sec. 293.

Oath to subscription: Civ. Code, sec. 295.

Penal Code—17.

§ 558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the State prison not less than three nor more than ten years.

False certificate, report, or notice; civil liability of officers: See sec. 316, Civ. Code.

Corporations, organization of: Civ. Code, sec. 283.

Records: Civ. Code, secs. 377, 378.

Increasing stock: Civ. Code, sec. 359.

§ 559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a misdemeanor.

See Civ. Code, secs. 292, 293; and see ante, sec. 558.

§ 560. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or any of them, by which it is intended, either—

1. To make any dividend, except from the surplus profits arising from the business of the cor-

poration, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation;

—is guilty of a misdemeanor.

Dividends to be made from surplus profits: Civ. Code, sec. 309.

§ 561. Every officer, agent, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of a misdemeanor.

§ 562. Every officer, agent, teller, or clerk of any bank, and every individual banker, or agent, teller, or clerk of any individual banker, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

§ 563. Every director, officer, or agent of any corporation or joint-stock association, who know-

ingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint-stock association who; with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the State prison not less than three nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

See ante, sec. 558.

Agent of corporation: See post, sec. 950.

§ 564. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony. [Amendment approved January 27, 1876; Amendments 1875-6, p. 113. In effect in sixty days.]

See Civ. Code, sec. 316.

See sec. 558.

False reports, act relating to: See post, Appendix, p. 541.

§ 565. Every officer or agent of any corporation, having or keeping an office within this State, who has in his custody or control any book, paper, or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

See Civ. Code, secs. 377, 378, 382, 383.

§ 566. Every officer, agent, or stockholder of any railroad company, who knowingly assents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and exclusive of its real estate, is guilty of a misdemeanor.

Offenses defined.—This section defines two or more offenses—one being a concurrence by an officer of a corporation in making a false statement, and the other a concurrence in its publication: See Civ. Code, secs. 309, 456, 457.

§ 567. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

§ 568. Every director of a corporation or joint-stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this chapter.

§ 569. Every director of a corporation or joint-stock association, who is present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors.

See Civ. Code, secs. 309, 317, 377.

§ 570. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding, or omission of such directors, in violation of this chapter, occurs, is deemed to have concurred therein, if the facts constituting such violation appear on the records or minutes of the proceedings of the board of directors, and he remains a director of the same company for six months thereafter, and does not within that time cause, or in writing require, his dissent from such illegality to be entered in the minutes of the directors.

§ 571. It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation was one created by the laws of another State, government, or country, if it was one carrying on business or keeping an office therefor within this State.

§ 572. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

CHAPTER XIV.

FRAUDULENT ISSUE OF DOCUMENTS OF TITLE TO
MERCHANDISE.

- § 577. Issuing fictitious bills of lading, etc.
- § 578. Issuing fictitious warehouse receipts.
- § 579. Erroneous bills of lading or receipts issued in good faith.
- § 580. Duplicate receipts must be marked "duplicate."
- § 581. Selling, etc., property received for transportation or storage.
- § 582. Bill of lading or receipt issued by warehouseman.
- § 583. Property demanded by process of law.

§ 577. Every person, being the master, owner, or agent of any vessel, or officer or agent of any railroad, express, or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt, or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express, or transportation company, or other carrier, unless the same has been so shipped or delivered, and is at the time actually under the control of such carrier, or the master, owner, or agent of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading, receipt, or voucher, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

Bill of lading: See Civ. Code, sec. 2126.

§ 578. Every person carrying on the business of a warehouseman, wharfinger, or other depository of property, who issues any receipt, bill of lading, or other voucher for any merchandise of any description, which has not been actually re-

ceived upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

See Civ. Code, sec. 1814.

§ 579. No person can be convicted of an offense under the last two sections by reason that the contents of any barrel, box, case, cask, or other vessel or package mentioned in the bill of lading, receipt, or other voucher, did not correspond with the description given in such instrument of the merchandise received, if such description corresponded substantially with the marks, labels, or brands upon the outside of such vessel, or package, unless it appears that the accused knew that such marks, labels, or brands, were untrue.

See Civ. Code, sec. 1817.

§ 580. Every person mentioned in this chapter, who issues any second or duplicate receipt or voucher, of a kind specified therein, at a time while any former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

See Civ. Code, sec. 2130.

§ 581. Every person mentioned in this chapter, who sells, hypothecates, or pledges any merchandise for which any bill of lading, receipt, or vouch-

er has been issued by him, without the consent in writing thereto of the person holding such bill, receipt, or voucher, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding one thousand dollars, or both.

See Pol. Code, secs. 3152-3157.

§ 582. [Repealed. Approved March 30, 1874; Amendments 1873-4, p. 434. In effect July 1, 1874.]

See Civ. Code, secs. 2127, 2128.

§ 583. The last two sections do not apply where property is demanded or sold by virtue of process of law.

CHAPTER XV.

MALICIOUS INJURIES TO RAILROAD BRIDGES, HIGHWAYS, BRIDGES, AND TELEGRAPHS.

- § 587. Injuries to railroads and railroad bridges.
- § 588. Injuries to highways, private ways, and bridges.
- § 589. Injuries to toll-houses and gates.
- § 590. Injuries to milestones and guide-boards.
- § 591. Injuring telegraph lines.
- § 592. Taking water from or obstructing canals.

§ 587. Every person who maliciously, either—

1. Removes, displaces, injures, or destroys any part of any railroad, whether for steam or horse cars, or any track of any railroad, or any branch or branch-way, switch, turnout, bridge, viaduct, culvert, embankment, station-house, or other structure or fixture, or any part thereof, attached to or connected with any railroad; or,

2. Places any obstruction upon the rails or track of any railroad, or of any switch, branch, branch-way, or turnout connected with any railroad;

—is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not less than six months.

Stats. 1861, 625, sec. 53.

§ 588. Every person who maliciously digs up, removes, displaces, breaks, or otherwise injures or destroys any public highway or bridge, or any private way laid out by authority of law, or bridge upon such highway or private way, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year.

Stats. 1861, 397, sec. 20.

§ 589. Every person who maliciously injures or destroys any toll-house or turnpike gate, is guilty of a misdemeanor.

Stats. 1853, 176, sec. 32.

§ 590. Every person who maliciously removes or injures any mile-board, post, or stone, or guide-post, or any inscription on such, erected upon any highway, is guilty of misdemeanor.

§ 591. Every person who maliciously takes down, removes, injures, or obstructs any line of telegraph, or any part thereof, or appurtenance or apparatus connected therewith, or severs any wire thereof, is guilty of a misdemeanor.

§ 592. Every person who shall without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume, or reservoir, used for the purpose of holding or conveying water for manufacturing, agricultural, mining, or domestic uses, or who shall, without like authority, raise, lower, or otherwise disturb any gate or other appurtenance thereof

used for the control or measurement of water, or who shall empty or place, or cause to be emptied or placed into any such canal, ditch, flume, or reservoir, any rubbish, filth, or obstruction to the free flow of the water, is guilty of a misdemeanor. [New section approved April 1st, 1878. Amendments 1877-8, 118. In effect immediately.]

TITLE XIV.

MALICIOUS MISCHIEF.

- § 594. Malicious mischief in general, defined.
- § 595. Specifications in following sections not restrictive of last section.
- § 596. Poisoning cattle.
- § 597. Killing, maiming, or torturing animals.
- § 598. Killing, etc., birds in cemeteries.
- § 599. Killing seals. [Repealed.]
- § 600. Burning buildings, etc., not the subject of arson.
- § 601. Using gunpowder, etc., in destroying or injuring any buildings.
- § 602. Malicious injuries to freehold.
- § 603. Limitation upon the operations of the preceding section.
- § 604. Injuries to standing crops, etc.
- § 605. Removing, defacing, or altering landmarks.
- § 606. Destroying or injuring jails.
- § 607. Destroying or injuring bridges, dams, etc.
- § 608. Burning or injuring rafts. Setting adrift vessels.
- § 609. Removing buoys and beacons.
- § 610. Masking or removing signals, or exhibiting false lights.
- § 611. Obstructing navigable streams.
- § 612. Depositing sand, dust, etc., in Humboldt Bay.
- § 613. Throwing overboard ballast, or obstructing navigation.
- § 614. Mooring vessels to buoys.
- § 615. Injuries to signals, etc., in United States survey.
- § 616. Destroying or tearing down notices, etc.
- § 617. Injuring or destroying written instrument.
- § 618. Opening or publishing sealed letters.
- § 619. Disclosing contents of telegraphic message.
- § 620. Altering telegraphic messages.
- § 621. Opening telegrams.
- § 622. Injuring works of art or improvements.
- § 623. Destroying works of literature, etc., in public libraries.
- § 624. Breaking or obstructing water-pipes, etc.
- § 625. Drawing water from works after they have been closed.

§ 594. Every person who maliciously injures or destroys any real or personal property not his

own, in cases otherwise than such as are specified in this Code, is guilty of a misdemeanor.

§ 595. The specification of the acts enumerated in the following sections of this chapter is not intended to restrict or qualify the interpretation of the preceding section.

§ 596. Every person who willfully administers any poison to an animal, the property of another, or maliciously exposes any poisonous substance, with the intent that the same shall be taken or swallowed by any such animal, is punishable by imprisonment in the State prison not exceeding three years, or in the county jail not exceeding one year, and a fine not exceeding five hundred dollars.

See secs. 594, 597.

§ 597. Every person who maliciously kills, maims, or wounds an animal, the property of another, or who maliciously and cruelly beats, tortures or injures any animal, whether belonging to himself or another, is guilty of a misdemeanor.

Stats. 1855, 105, sec. 4.

Act to prevent cruelty to animals, see post, Appendix, p. 506.

§ 598. Every person who, within any public cemetery or burying-ground, kills, wounds, or traps any bird, or destroys any bird's nest other than swallows' nests, or removes any eggs or young birds from any nest, is guilty of a misdemeanor.

For acts protecting mocking-birds, blue cranes, and also protecting gulls near Santa Monica, see post, Appendix, p. 562 et seq.

§ 599. That section five hundred and ninety-nine of the Penal Code is hereby repealed. [In effect March 12th, 1880.]

Penal Code 18.

Section 599, prohibiting killing seals and sea-lions within one mile of the Cliff House in the city and county of San Francisco, was repealed by act of March 12, 1880; Amendments 1880, 5 (Ban. ed. 26). Took effect from passage.

§ 600. Every person who willfully and maliciously burns any bridge exceeding in value fifty dollars, or any building, snow-shed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass or tree, or any fence, not the property of such person, is punishable by imprisonment in the State prison for not less than one nor more than ten years.

Stats. 1861, 131, sec. 5.

§ 601. Every person who maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or injures the whole or any part of any building, by means of which the life or safety of a human being is endangered, is guilty of felony.

§ 602. Every person who willfully commits any trespass by either—

1. Cutting down, destroying, or injuring any kind of wood or timber standing or growing upon the lands of another; or,

2. Carrying away any kind of wood or timber lying on such lands; or,

3. Maliciously injuring or severing from the freehold of another anything attached thereto, or the produce thereof; or,

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil, or stone; or

5. Digging, taking, or carrying away from any land in any of the cities of the State, laid down on

the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil, or stone; or,

6. Putting up, affixing, fastening, printing, or painting upon any property belonging to the State, or to any city, county, town, or village, or dedicated to the public, or upon any property of any person, without license from the owner, any notice, advertisement, or designation of, or any name for any commodity, whether for sale or otherwise, or any picture, sign, or device intended to call attention thereto; or,

7. Entering upon any lands owned by any other person or persons whereon oysters or other shellfish are planted or growing; or injuring, gathering, or carrying away any oysters or other shellfish planted, growing or being on any such lands, whether covered by water or not, without the license of the owner or legal occupant thereof; or destroying or removing, or causing to be removed or destroyed, any stakes, marks, fences, or signs intended to designate the boundaries and limits of any such lands:

—Is guilty of a misdemeanor. [Amendment approved March 30, 1878; Amendments 1877-8, 118. In effect March 30, 1878.]

Act to prevent persons passing through inclosures: See post, Appendix, p. 550.

Acts to prevent leaving open of inclosures: See post, Appendix, p. 551.

Act to prevent hunting on inclosed lands: See post, Appendix, p. 551.

Act to protect Big Tree Groves: See post, Appendix, p. 565.

§ 603. The following acts do not constitute a public offense, within the meaning of the preceding section:

1. Gathering pitch from trees on the public lands of the State or United States, unless the bark from such trees is removed for more than one-eighth of their circumference, or cut made more than three inches in depth into the wood thereof;

2. Cutting trees upon the public lands of the State or United States, in good faith for the purpose of manufacturing the same into lumber or firewood, or preparing such lands for agricultural or mining purposes;

—unless such acts are committed upon swamp and overflowed, tide, salt marsh, or school lands belonging to the State, or within the limits of the lands granted by the United States to this State by act of Congress of June thirteenth, eighteen hundred and sixty-four, relating to the Yosemite Valley and Mariposa Big Tree Grove.

§ 604. Every person who maliciously injures or destroys any standing crops, grain, cultivated fruits or vegetables, the property of another, in any case for which a punishment is not otherwise prescribed by this Code, is guilty of a misdemeanor.

§ 605. Every person who either—

1. Maliciously removes any monument erected for the purpose of designating any point in the boundary of any lot or tract of land, or a place where a subaqueous telegraph cable lies; or,

2. Maliciously defaces or alters the marks upon any such monument; or,

3. Maliciously cuts down or removes any tree upon which any such marks have been made for such purpose, with intent to destroy such marks;
—is guilty of a misdemeanor.

Stats. 1857, 171, sec. 2.

§ 606. Every person who willfully and intentionally breaks down, pulls down, or otherwise de-

troys or injures any public jail or other place of confinement, is punishable by fine not exceeding ten thousand dollars, and by imprisonment in the State prison not exceeding five years.

§ 607. Every person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, or to drain or reclaim any swamp and overflowed tide or marsh land, or to store or conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town, or any embankment necessary to the same, or either of them, or willfully or maliciously makes or causes to be made, any aperture in such dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure, with intent to injure or destroy the same; or draws up, cuts, or injures any piles fixed in the ground for the purpose of securing any sea-bank, or sea-walls, or any dock, quay, or jetty, lock or sea-wall; or who, between the first day of October and the fifteenth day of April of each year, plows up or loosens the soil in the bed or on the sides of any natural watercourse or channel, without removing such soil within twenty-four hours from such watercourse or channel; or who, between the fifteenth day of April and the first day of October of each year, shall plow up or loosen the soil in the bed or on the sides of such natural watercourse or channel, and shall not remove therefrom the soil so plowed up or loosened before the first day of October next thereafter, is guilty of a misdemeanor, and upon conviction, punishable by a fine not less than one hundred dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding two years, or by both; provided, that nothing in this

section shall be construed so as to in any manner prohibit any person from digging or removing soil from any such watercourse or channel, for the purpose of mining. [Amendment approved April 12, 1880; Amendments 1880, 36. In effect April 12, 1880.]

Cutting levees.—Under this section, as it existed prior to its amendment in April, 1880, the commission of the acts mentioned therein constituted a felony.

§ 608. Every person who willfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, the property of another, is punishable by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months.

Act to protect lumber manufactures: See post, Appendix, p. 584.

§ 609. Every person who willfully removes any buoy or beacon, placed in any waters within this State by lawful authority, is guilty of a misdemeanor.

§ 610. Every person who unlawfully masks, alters, or removes any light or signal, or willfully exhibits any light or signal, with intent to bring any vessel into danger, is punishable by imprisonment in the State prison not less than three nor more than ten years.

§ 611. Every person who unlawfully obstructs the navigation of any navigable stream, is guilty of a misdemeanor.

Stats. 1850, 188, sec. 1.

§ 612. Every person who throws, deposits, or permits another in his employ to throw or deposit, any sawdust, slabs or refuse lumber, in any place where it may be carried or fall into the waters of Humboldt Bay, without first having constructed piers, bulkheads, dams, or other contrivances, approved by the Board of Supervisors of Humboldt County, to prevent the same from escaping into the channels of such bay, is guilty of a misdemeanor.

Stats. 1857, 66, secs. 1, 2.

§ 613. Every person who, within the anchorage of any port, harbor, or cove of this State, into which vessels may enter for the purpose of receiving or discharging cargo, throws overboard from any vessel the ballast, or any part thereof, or who otherwise places or causes to be placed in such port, harbor, or cove, any obstructions to the navigation thereof, is guilty of a misdemeanor.

Stats. 1861, 224, sec. 3; 1864, 138.

§ 614. Every person mooring any vessel to or hanging on with a vessel to any buoy or beacon, placed by competent authority in any navigable waters of this State, is guilty of a misdemeanor.

Stats. 1861, 224, sec. 2.

Act for protection of buoys and beacons: See post, Appendix, p. 515.

§ 615. Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected, or used by persons engaged in the United States Coast Survey, is guilty of a misdemeanor.

Stats. 1852, 148, sec. 6.

§ 616. Every person who intentionally defaces, obliterates, tears down, or destroys any copy or

transcript, or extract from or of any law of the United States or of this State, or any proclamation, advertisement, or notification set up at any place in this State, by authority of any law of the United States or of this State, or by order of any court, before the expiration of the time for which the same was to remain set up, is punishable by fine not less than twenty nor more than one hundred dollars, or by imprisonment in the county jail not more than one month.

§ 617. Every person who maliciously mutilates, tears, defaces, obliterates, or destroys any written instrument, the property of another, the false making of which would be forgery, is punishable by imprisonment in the State prison for not less than one nor more than five years.

§ 618. Every person who willfully opens or reads, or causes to be read, any sealed letter not addressed to himself, without being authorized so to do, either by the writer of such letter or by the person to whom it is addressed, and every person who, without the like authority, publishes any of the contents of such letter, knowing the same to have been unlawfully opened, is guilty of a misdemeanor.

§ 619. Every person who willfully discloses the contents of a telegraphic message, or any part thereof, addressed to another person, without the permission of such person, unless directed so to do by the lawful order of a court, is punishable by imprisonment in the State prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both fine and imprisonment. [Amendment approved April 15th, 1880; Amendments 1880, 38. In effect in 60 days.]

§ 620. Every person who willfully alters the purport, effect, or meaning of a telegraphic message to the injury of another, is punishable as provided in the preceding section.

Stats. 1862, 288, sec. 1.

§ 621. Every person not connected with any telegraph office who, without the authority or consent of the person to whom the same may be directed, willfully opens any sealed envelope inclosing a telegraphic message and addressed to any other person, with the purpose of learning the contents of such message, or who fraudulently represents any other person and thereby procures to be delivered to himself any telegraphic message addressed to such other person, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, is punishable as provided in section six hundred and nineteen.

§ 622. Every person, not the owner thereof, who willfully injures, disfigures, or destroys any monument, work of art, or useful or ornamental improvement within the limits of any village, town, or city, or any shade tree or ornamental plant growing therein, whether situated upon private ground or on any street, sidewalk, or public park or place, is guilty of a misdemeanor.

§ 623. Every person who maliciously cuts, tears, defaces, breaks, or injures any book, map, chart, picture, engraving, statue, coin, model, apparatus, or other work of literature, art, or mechanics, or object of curiosity, deposited in any public library, gallery, museum, collection, fair, or exhibition, is guilty of felony.

§ 624. Every person who willfully breaks, digs up, obstructs, or injures any pipe or main for con-

ducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenances or appendages therewith connected, is guilty of a misdemeanor.

Stats. 1861, 533, secs. 1, 2.

§ 625. Every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any stop-cock or faucet by which the flow of water is controlled, after having been notified that the same has been closed or shut for specific cause, by order of competent authority, is guilty of a misdemeanor.

Stats. 1861, 533, sec. 3.

TITLE XV.

MISCELLANEOUS CRIMES. .

Chapter I. Violation of the Laws for the Preservation of Game and Fish, §§ 626-37.

II. Of other and Miscellaneous Offenses, §§ 654-78.

CHAPTER I.

VIOLATION OF THE LAWS FOR THE PRESERVATION OF GAME AND FISH.

- § 626. Destruction of grouse, ducks, etc, when prohibited.
- § 626a-626i. [Repealed.]
- § 627. Game out of season.
- §§ 627a-627b-627c-627d. [Repealed.]
- § 628. Sale of fish, etc.
- § 328a. [Repealed.]
- § 629. Having screens in fishing.
- § 630. [Repealed.]
- § 631. Quail, partridge, or grouse.
- § 632. Taking trout by nets, etc., prohibited.
- §§ 632a-632b. [Repealed.]
- 3. Sale, taking or possession of trout.
- § 634. Taking, aale, or possession of salman, when prohibited.
- § 635. Use of explosive substances in fishing prohibited.
- § 636. Setting net, trap, etc., for fish.
- § 637. Fishways and ladders, penalties for not keeping.

§ 626. Every person who, between the first day of March and the first day of October in each year, shall hunt, pursue, take, kill, or destroy or have in his possession, any valley quail, bob-white partridge, or any kind of wild duck, or rail; every person who, between the fifteenth day of February and the first day of September in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, any mountain quail or grouse; every person who, between the fifteenth day of February and the fifteenth day of July in each year, shall hunt, pursue, take, kill, or destroy, or have in his possession, any dove or doves; every person who

shall take, gather, or destroy the eggs or nest of any quail, bob-white, partridge, pheasant, grouse, dove, robin, or any kind of wild duck or rail; every person who, in the State of California, shall at any time hunt, shoot, shoot at, take, kill, or destroy, buy, sell, give away, or have in his possession, except for the purpose of propagation, or for educational or scientific purposes, any English skylark, robin, canary, humming-bird, thrush, or mocking-bird, or any part of the skin, skins, or plumage thereof, or who shall rob the nests or take or destroy, or offer for sale, the eggs of any of the said birds; every person who, before the first day of March, eighteen hundred and ninety-nine, shall hunt, pursue, take, kill, or destroy, or have in his possession, any pheasant; every cold-storage company, person keeping a cold-storage warehouse, tavern, or hotel-keeper, restaurant, or eating-house keeper, market-man, or other person, who shall buy, sell, expose or offer for sale, or give away, or have in his possession, any quail, bob-white, partridge, robin, grouse, dove, pheasant, wild duck, or rail, during the time it shall be unlawful to kill such birds; every person who shall hunt, pursue, take, kill, or have in his possession, or destroy any male deer between the fifteenth day of October and the fifteenth day of July of the following year; every person who shall at any time hunt, pursue, take, kill, or destroy, or have in his possession, any female deer, or spotted fawn, or any antelope, elk, or mountain sheep; every person who shall at any time buy, sell, or offer for sale, the hide or meat of any deer, elk, antelope, or mountain sheep; every person who shall buy, sell, offer, or expose for sale, transport or carry, or have in his possession, the skin, hide, or pelt of any deer from which the evidence of sex has been removed, is guilty of a misdemeanor; provided, however, that the right of possession for the purpose of propagation shall first be obtained by a permit in

writing, from the Board of Fish Commissioners of the State of California. Any person found guilty of a violation of any of the provisions of this section, shall be fined in a sum not less than twenty dollars or more than five hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or more than one hundred and fifty days, or be punished by both such fine and imprisonment. It shall be no defense in a prosecution for a violation of any of the provisions of this section that the birds or animals were taken or killed outside this State; provided, however, that nothing in this section shall be held to apply to the hide of any of said animals taken or killed in Alaska or any foreign country. [Amendment approved March 9, 1897; Stats. 1897, ch. 89. In effect immediately.]

Acts for the protection of game: See post, Appendix, p. 561.

~~§§ 626a—626b—626c—626d—626e—626f—626g—626h—626i.~~ [Repealed March 9, 1897; Stats. 1897, ch. 89. In effect immediately. These sections were new sections adopted in 1895; Stats. 1895, p. 256, 257.]

§ 627. Every person who shall use a shotgun of a larger caliber than that commonly known and designated as a number ten gauge, shall be guilty of a misdemeanor. The proof of the possession of said gun in the field, or marsh, bay, lake, or stream, shall be prima facie evidence of its illegal use. Every person who, upon any inclosed or cultivated grounds which are private property, and where signs are displayed forbidding such shooting, shall shoot any quail, bob-white, pheasant, partridge, grouse, dove, wild duck, or deer, without permission first obtained from the owner or

person in the possession of such ground, or who shall maliciously tear down, mutilate, or destroy any sign, sign-board, or other notice forbidding shooting on private property, shall be guilty of a misdemeanor. Every railroad company, express company, transportation company, or other common carrier, their officers, agents, and servants, and every other person who shall transport, carry, or take out of this State, or who shall receive for the purpose of transporting from the State, any deer, deer skin, buck, doe, or fawn, or any quail, partridge, pheasant, grouse, prairie chicken, dove, or wild duck, transport, carry, or take from the State, or receive for the purpose of transporting from this State, any such animal or bird, shall be guilty of a misdemeanor; provided, that the right to transport for the purposes of propagation shall first be obtained by permit, in writing, from the Board of Fish Commissioners of the State of California. Any person found guilty of a violation of any of the provisions of this section, shall be fined in a sum not less than twenty dollars, or more than five hundred dollars, or be imprisoned in the county jail in the county in which the conviction shall be had, not less than ten days or more than one hundred and fifty days, or be punished by both such fine and imprisonment. [Amendment approved March 9, 1897; Stats. 1897, ch. 89. In effect immediately.]

Acts for the protection of game: See post Appendix, p. 561.

§§ 627a-627b-627c-627d. [Repealed; Stats. 1897, ch. 89. The sections above repealed were adopted in 1895.]

§ 628. Every person who takes or catches, buys, sells, or has in his possession, any striped bass of less than three pounds in weight; every

person who, at any time, takes, catches, or kills any black bass except with hook and line; every person who takes, catches, or kills, or buys, sells, exposes or offers for sale, or has in his possession, any black bass, between the first day of January and the first day of July of each year; every person who takes, catches, or kills, or buys, sells, exposes or offers for sale, or has in his possession any lobster or crawfish between the fifteenth day of May and the fifteenth day of July of each year; every person who, at any time, buys, sells, exposes or offers for sale, or has in his possession any lobster or crawfish of less than nine and one half inches in length, measured from one extremity to the other, exclusive of legs, claws, or feelers; every person who, at any time, buys, sells, exposes or offers for sale, or has in his possession any female crab; every person who, at any time, buys, sells, exposes or offers for sale, or has in his possession any sturgeon of less than three feet in length; every person who takes, catches, or kills, or buys, sells, offers or exposes to sell, or has in his possession any fresh sturgeon, between the first day of April and the first day of September of each year; every person who by seine or other means shall catch the young fish of any species, and who shall not return the same to the water immediately and alive, or who buys, sells, offers or exposes for sale, or has in his possession any such fish, fresh or dried; every person who catches, takes, or carries away any fish from any pond or reservoir belonging to or controlled by the State Board of Fish Commissioners, or any person or corporation, without the consent of the owner thereof, which pond or reservoir has been stocked with fish; every person who shall at any time, except with hook and line, take or catch fish of any kind from any river or stream upon which a State or United States fish hatchery is in operation, is guilty of a mis-

demeanor, and is punishable by a fine not less than twenty dollars nor more than five hundred dollars, or by imprisonment in the county jail in the county in which conviction shall be had, not less than ten days nor more than one hundred and fifty days, or by both such fine and imprisonment. All the fines imposed and collected for any violation of any of the provisions of this section shall be paid into the "fish commission fund." Nothing in this section shall prohibit the United States Fish Commission and the Fish Commission of this State from taking, at all times, such fish as they deem necessary for the purpose of artificial hatching. It shall be no defense in a prosecution for a violation of any of the provisions of this section that the fish were caught or taken outside or within this State. [Amendment approved March 31, 1897; Stats. 1897, ch. 230. In effect immediately.]

Acts relating to fishing and the protection of fish: See post, Appendix, tit. Fish, p. 554.

§ 628a. [Repealed March 31, 1897; Stats 1897, ch. 230. This section was adopted in 1895; Stats. 1895, p. 259.]

§ 629. Any person, or persons, corporation or corporations, owning, in whole or in part, or leasing, operating, or having in charge, any millrace, irrigating-ditch, or canal, taking or receiving its waters from any river, creek, stream, or lake, in which fish have been placed or may exist, shall put, or cause to be placed and maintain over the inlet of said ditch, canal, or millrace, a wire screen of such construction and fineness, strength and quality, as shall prevent any such fish from entering such ditch, canal, or millrace, when required to do so by the fish commissioners. Any person or corporation violating the provisions of this section, or who shall neglect or refuse to put up or maintain such screen, shall be guilty of a

misdeemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and may be imprisoned at the rate of two dollars per day until such fine be paid or satisfied; provided, that the continuance from day to day of the neglect or refusal, after notification in writing by the fish commissioners, shall constitute a separate offense. [New section approved March 27, 1895; Stats. 1895, p. 259. In effect immediately. There was formerly a section 629, which was repealed in 1883; Stats. 1883, p. 81.]

Acts relating to fishing and the protection of fish: See post, Appendix, 554.

§ 630. [Repealed March 31, 1897; Stats. 1897, ch. 230.]

§ 631. Every person who shall at any time net or pound, cage or trap, any quail, partridge, or grouse, and every person who shall sell, transport, or give away, or offer, or expose for sale, or have in his possession any quail, partridge, or grouse that has been snared, captured, or taken by means of any net or pound, cage or trap, whether taken in the state of California, or shipped into the state from any other state, territory or foreign country, is guilty of a misdemeanor; provided, the same may be taken for the purposes of propagation, written permission having been first obtained from the game warden of the county wherein said birds are to be taken. Proof of possession of any quail, partridge, or grouse, which shall not show evidence of having been taken by means other than a net or pound, shall be prima facie evidence in any prosecution for violation of the provisions of this section that the person in whose possession such quail, partridge, or grouse is found, took, killed, or destroyed the same by means of net or pound. [Amendment approved March 27, 1895; Stats. 1895, p. 260. In effect immediately.]

§ 632. Every person who buys, sells, offers or exposes for sale any kind of trout less than six inches in length, every person who takes, catches, kills, buys, sells, exposes or offers for sale, or has in his possession any salmon trout, brook, or lake trout, or any variety of trout, except steelhead trout (*Salmo gairdneri*), between the first day of December and the first day of April of the following year, every person who buys, sells, offers or exposes for sale any steelhead trout (*Salmo gairdneri*), between the first day of February and the first day of May of each year, every person who, at any time, takes or catches any trout, except with hook and line, is guilty of a misdemeanor; provided, however, that steelhead trout (*Salmo gairdneri*) may be taken in tide water, between the first day of May and the first day of February of the following year, with lawful nets; and a lawful net shall be a net that when placed in the water is unsecured and free to float with the current or tide, and the meshes of which are, when drawn closely together and measured inside the knot, not less than seven and one-half inches in length. Every person found guilty of any violation of any of the provisions of this section shall be fined in a sum not less than twenty dollars, or be imprisoned in the county jail in the county in which conviction shall be had not less than ten days, or be punished by both such fine and imprisonment; and all fines imposed and collected for any violation of any of the provisions of this section shall be paid into the "Fish Commission Fund." Nothing in this section shall prohibit the possession at any time of steelhead trout (*Salmo gairdneri*) when taken in tide water with hook and line, and nothing shall prohibit the United States Fish Commission and the Fish Commission of this State from taking, at all such times, such fish as they deem necessary for the purpose of artificial hatch-

ing. [Amendment approved February 25, 1897; Stats. 1897, ch. 24. In effect immediately.]

§§ 632a-632b. [Repealed March 31, 1897; Stats. 1897, ch. 230. These sections here repealed were new sections, added in 1895.]

§ 633. [Repealed March 31, 1897; Stats. 1897, ch. 230.]

§ 634. Every person who, between the tenth day of September and the sixteenth day of October of each year, takes or catches, buys, sells, offers or exposes for sale, or has in his possession any fresh salmon; every person who, between the fifteenth day of October and the fifteenth day of November of each year, takes or catches any salmon above tide water; every person who shall set or draw, or assist in setting or drawing, any net or seine for the purpose of taking or catching salmon, shad, striped bass, or sturgeon, in any of the waters of the State, at any time between sunrise of each Saturday and sunset of the following Sunday; every person who, for the purpose of catching salmon, shad, striped bass, or sturgeon, in any of the waters of the State, fish with or use any seine or net, drag-net, or paranzella, the meshes of which are, when drawn closely together and measured inside the knot, less than seven and one-half inches in length, is guilty of a misdemeanor, and is punishable by a fine not less than two hundred dollars, or by imprisonment in the county jail in which the conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment, and all the fines imposed and collected for any violations of the provisions of this section shall be paid into the "Fish Commission Fund." In the construction and meaning of this section, the limits of tide water in the Sacramento River shall be deemed to extend from its mouth to the City of Sacramento; in the San Joa-

quin River, from its mouth to the Southern Pacific Railroad bridge near Lathrop, in San Joaquin County; in Eel River, in Humboldt County, from its mouth to East Ferry, above the town of Fortuna; in the Klamath River, to a point on the river north of the residence of James McGarvey; in Smith River, in Del Norte County, from its mouth to Higgins Ferry. Nothing in this section shall prohibit the United States Fish Commission and the Fish Commission of this State, from taking, at all times, such fish as they deem necessary for the purposes of artificial hatching. It shall be no defense in a prosecution for the violation of any of the provisions of this section that the fish were caught or taken outside or within this State. [Amendment approved February 25, 1897, ch. 24.]

§ 635. Every person who shall place or cause to be placed in any of the waters of this State, dynamite, gunpowder, or other explosive compound, for the purpose of killing or taking fish or who shall at any time, take, procure, kill, or destroy any fish of any kind by means of explosives; every person who places or allows to pass, or who places where it can pass, into any of the waters of this State, any lime, gas, tar, cocculus indicus, sawdust, shavings, slabs, edgings, mill or factory refuse, or any substance deleterious to fish, is guilty of a misdemeanor, and is punishable by a fine of not less than two hundred and fifty dollars, or imprisonment in the county jail in the county in which conviction shall be had, not less than one hundred and fifty days, or by both such fine and imprisonment. [Amendment approved March 31, 1897; Stats. 1897, ch. 230. In effect immediately.]

§ 636. Every person who shall cast, extend, or set any seine or net of any kind, for the catching

of any fish in any river, stream, or slough of this State, which shall extend more than one third across the width of said river, stream, or slough, at the time and place of such fishing; every person who shall cast, extend, set, use, or continue, or who shall assist in casting, extending, using, or continuing "Chinese shrimp or bag net," or a net of similar character, for the catching of fish in the waters of this State; every person who shall cast, extend, set, use, or continue, or have in his possession, or who shall assist in casting, extending, or using "Chinese sturgeon lines," or lines of a similar character; every person who shall set, use, or continue, or shall assist in setting, using, or continuing any pound weir, set-net, trap, or any other fixed or permanent contrivance for catching fish in the waters of this State—and every net shall be considered a set-net that is secured in any way and not free to drift with the current or tide—is guilty of a misdemeanor, and is punishable by a fine of not less than one hundred dollars, or by imprisonment in the county jail in the county in which the conviction shall be had, not less than fifty days or by both such fine and imprisonment; and all the fines imposed and collected for any violation of any of the provisions of this section shall be paid into the "Fish Commissioners' Fund." [Amendment approved March 31, 1897; Stats. 1897, ch. 230. In effect immediately.]

§ 637. Every owner of a dam or other obstruction in any running water of this State who, after being ordered and notified by the fish commissioners to construct a fish ladder on or to repair a fish ladder already constructed on such dam or other obstruction according to the plans of the fish commissioners, fails to construct or repair such fish ladder within thirty days after such notice is guilty of a misdemeanor, and upon conviction

shall pay a fine of not less than fifty dollars nor more than two hundred, or by imprisonment in the county jail of the county in which such conviction is had of not less than twenty-five days nor more than one hundred days.

2. One half of all moneys collected as fines for violations of the provisions of this act shall be paid to the informer, one fourth to the district attorney of the county where the conviction is secured, and the remaining one fourth shall be paid to the state board of fish commissioners of this State, to be by them used for the purposes and in conformity of "an act to authorize the State board of fish commissioners to import game birds into the State for propagation," approved March sixteenth, eighteen hundred and eighty-nine. [Amendment approved March 11, 1891; Stats. 1891, p. 93.]

Acts relating to fishing and the protection of fish: See post, Appendix, p. 554.

Fishway, act relating to: See post, Appendix, p. 556.

CHAPTER II.

OF OTHER AND MISCELLANEOUS OFFENSES.

- § 638. Neglect or postponement of telegraphic messages.
- § 639. Employee using information from messages.
- § 640. Clandestinely learning the contents of a telegram.
- § 641. Bribing telegraph operator.
- § 642. Collecting tolls, etc., at San Francisco, without authority.
- § 643. Violations of police regulations of San Francisco harbor.
- § 644. Enticing seamen to desert.
- § 645. Harboring deserting seamen.
- § 646. Aiding apprentices to run away or harboring them.
- § 647. Vagrants.
- § 648. Issuing or circulating paper money.
- § 649. Officers of fire department issuing false certificates.
- § 650. Sending letters threatening to expose another.
- § 651. Requiring apprentices to work more than eight hours.
- § 652. National Guard failure to attend parade, obey orders, etc.
- § 653. Members of National Guard, insubordination of.
- § 654. Abuse of school teachers.

§ 638. Every agent, operator, or employee of any telegraph office, who willfully refuses or neglects to send any message received at such office for transmission, or willfully postpones the same out of its order, or willfully refuses or neglects to deliver any message received by telegraph, is guilty of a misdemeanor. Nothing herein contained shall be construed to require any message to be received, transmitted, or delivered, unless the charges thereon have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the government of the United States or of this State, or other resistance to the lawful authority, or any message cal-

culated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

Stats. 1862, 289, sec. 4.

- See Civ. Code, secs. 2161, 2162, 2207.

§ 639. Every agent, operator, or employe of any telegraph office, who in any way uses or appropriates any information derived by him from any private message passing through his hands, and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator, or employe, or trades or speculates upon any such information so obtained, or in any manner turns, or attempts to turn, the same to his own account, profit, or advantage, is punishable by imprisonment in the State prison not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Stats. 1862, 289, sec. 3, modified.

§ 640. Every person who by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently reads, or attempts to read, any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or willfully and fraudulently, or clandestinely, learns or attempts to learn the contents or meaning of any message, while the same is in any telegraph office, or is being received thereat or sent therefrom, or who uses or attempts to use, or communicates to others, any information so obtained, is punishable as provided in section six hundred and thirty-nine.

§ 641. Every person who, by the payment or promise of any bribe, inducement, or reward, procures or attempts to procure any telegraph agent,

operator, or employe to disclose any private message, or the contents, purport, substance, or meaning thereof, or offers to any such agent, operator, or employe any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employe, or uses or attempts to use any such information so obtained, is punishable as provided in section six hundred and thirty-nine.

§ 642. Every person who collects any toll, wharfage, or dockage, or lands, ships, or removes any property upon or from any portion of the water front of San Francisco, or from or upon any of the wharves, piers, or landings under the control of the Board of State Harbor Commissioners, without being by such board authorized so to do, is guilty of a misdemeanor.

Stats. 1864, 145, sec. 11.

See Pol. Code, secs. 2524, subd. 6; 2527, 2539, 2540.

§ 643. Every person who violates any of the provisions of the laws of this State relating to sailor boarding-houses and shipping-offices in San Francisco, or who receives any gratuity or reward other than as therein provided, for the performance of any services under a license issued pursuant to the provisions of such laws, is guilty of a misdemeanor.

Stats. 1870, 244.

See Pol. Code, secs. 2583-2607.

§ 644. Every person who entices seamen to desert from any vessel lying in the waters of this State, and on board of which they have shipped for a term or voyage unexpired at the time of such enticement, is guilty of a misdemeanor.

Stats. 1853, 186, sec. 1.

See Pol. Code, sec. 2602.

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§ 645. Every person who harbors or secretes any seaman, knowing him to be shipped, and with a view to persuade or enable him to desert, is guilty of a misdemeanor.

Stats. 1853, 186, sec. 2.

See Pol. Code, secs. 2602, 2607.

§ 646. Every person who willfully and knowingly aids, assists, or encourages to run away, or who harbors or conceals any person bound or held to service or labor, is guilty of a misdemeanor.

Stats. 1858, 137.

Apprentices: Civ. Code, sec. 264; and Appendix to Civil Code, title Apprentices.

§ 647. Vagrants defined. 1. Every person (except a California Indian) without visible means of living who has the physical ability to work, and who does not seek employment, nor labor when employment is offered him; or,

2. Every healthy beggar who solicits alms as a business; or,

3. Every person who roams about from place to place without any lawful business; or,

4. Every person known to be a pickpocket, thief, burglar, or confidence operator, either by his own confession, or by his having been convicted of either of said offenses, and having no visible or lawful means of support, when found loitering around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction room, store, shop, or crowded thoroughfare, car, or omnibus, or at any public gathering or assembly, or,

5. Every idle or dissolute person, or associate of known thieves, who wanders about the streets at late or unusual hours of the night; or,

6. Every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the per-

mission of the owner or party entitled to the possession thereof; or,

7. Every lewd or dissolute person who lives in and about houses of ill-fame; or,

8. Every person who acts as a runner or caper for attorneys in and about police courts or city prisons, in incorporated cities or cities and counties; or,

9. Every common prostitute and common drunkard, is a vagrant, and is punishable by imprisonment in the county jail not exceeding six months. [Amendment approved March 19, 1891; Stats. 1891, p. 130; in effect immediately.]

Stats. 1863, 770, sec. 1.

§ 648. Every person who makes, issues, or puts in circulation any bill, check, ticket, certificate, promissory note, or the paper of any bank, to circulate as money, except as authorized by the laws of the United States, for the first offense is guilty of a misdemeanor, and for each and every subsequent offense is guilty of felony.

Stats. 1855, 128, sec. 1, 2.

See post, sec. 654; Civ. Code, sec. 356. Const. Cal., art. iv, sec. 35.

§ 649. Every officer of a fire department who willfully issues, or causes to be issued, any certificate of exemption to a person not entitled thereto, is guilty of a misdemeanor.

Stats. 1864, 257, sec. 7.

§ 650. Every person who knowingly and willfully sends or delivers to another any letter or writing, whether subscribed or not, threatening to accuse him or another of a crime, or to expose or publish any of his failings or infirmities, is guilty of a misdemeanor.

See ante, sec. 523.

§ 651. Every person having a minor child under his control, either as a ward or an apprentice, who, except in vinicultural or horticultural pursuits, or in domestic or household occupations, requires such child to labor more than eight hours in any one day, is guilty of a misdemeanor.

See Stat. 1872. Stats. 1868, 63.

§ 652. Every commissioned officer of the National Guard, who willfully fails to attend any parade or encampment, and every member of the National Guard who neglects or refuses to obey the lawful command of his superior on any day of parade or encampment, or to perform such military duty as may be lawfully required of him, is punishable by a fine of not less than five nor more than one hundred dollars.

Disobeying orders: Sec. 1930, Pol. Code.

Parades and drills: Secs. 2018-2030.

§ 653. Every member of the National Guard who, when duly notified, fails to appear at a parade, or who disobeys any lawful order, or who uses disrespectful language towards his superior, or who commits any act of insubordination, is guilty of a misdemeanor.

§ 654. Every parent, guardian, or other person, who upbraids, insults, or abuses any teacher of the public schools, in the presence or hearing of a pupil thereof, is guilty of a misdemeanor. [New section approved March 30, 1874; Amendments 1873-4, p. 435. In effect July 1, 1874.]

This new section has the same number as the first section in the next title.

TITLE XVI.

GENERAL PROVISIONS.

- § 654. Acts made punishable by different provisions of this Code.
- § 655. Acts punishable under foreign law.
- § 656. Foreign conviction or acquittal.
- § 657. Contempt, how punishable.
- § 658. Mitigation of punishment in certain cases.
- § 659. Aiding in misdemeanor.
- § 660. Sending letters, when deemed complete.
- § 661. Removal from office for neglect of official duty.
- § 662. Omission to perform duty, when punishable.
- § 663. Attempts to commit crimes, when punishable.
- § 664. Attempts to commit crimes, how punishable.
- § 665. Restrictions upon the preceding sections.
- § 666. Second offense, how punished after conviction of former offense.
- § 667. Second offenses, how punished after conviction of attempt to commit a State prison offense.
- § 668. Foreign conviction for former offense.
- § 669. Second term of imprisonment, when to commence.
- § 670. When term of imprisonment commences, etc.
- § 671. Imprisonment for life.
- § 672. Fine may be added to imprisonment.
- § 673. Civil rights of convict suspended.
- § 674. Civil death.
- § 675. Limitations on two preceding sections.
- § 676. Person of convict protected.
- § 677. Forfeitures.
- § 678. Valuation in gold coin.
- § 679. Coercion or compulsion of persons seeking employment.

§ 654. An act or omission which is made punishable in different ways by different provisions of this Code, may be punished under either of such provisions, but in no case can it be punished under more than one; an acquittal or conviction and sentence under either one bars a prosecution for the same act or omission under any other. In the cases specified in sections six hundred and forty-eight, six hundred and sixty-seven, and six hundred and sixty-eight, the punishments therein pre-

scribed must be substituted for those prescribed for a first offense, if the previous conviction is charged in the indictment and found by the jury.

Effect of plea of guilty: See post, sec. 1158.

§ 655. An act or omission declared punishable by this Code is not less so because it is also punishable under the laws of another State, government, or country, unless the contrary is expressly declared.

§ 656. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of another State, government, or country, founded upon the act or omission in respect to which he is on trial, he has been acquitted or convicted, it is a sufficient defense.

See post, sec. 1016.

Foreign conviction or acquittal: See also sec. 668.

§ 657. A criminal act is not the less punishable as a crime because it is also declared to be punishable as a contempt.

Criminal contempts: See sec. 166.

§ 658. When it appears, at the time of passing sentence upon a person convicted upon indictment, that such person has already paid a fine or suffered an imprisonment for the act of which he stands convicted, under an order adjudging it a contempt, the court authorized to pass sentence may mitigate the punishment to be imposed in its discretion.

§ 659. Whenever an act is declared a misdemeanor, and no punishment for counseling or aiding in the commission of such act is expressly prescribed by law, every person who counsels or aids

another in the commission of such act is guilty of a misdemeanor.

Accessaries defined: Sec. 32.

Accessaries, how punished: Sec. 33.

§ 660. In the various cases in which the sending of a letter is made criminal by this Code, the offense is deemed complete from the time when such letter is deposited in any post-office or any other place, or delivered to any person, with intent that it shall be forwarded.

Threatening letters—Sending with intent to extort money: Sec. 523.

§ 661. In addition to the penalty affixed by express terms, to every neglect or violation of official duty on the part of public officers—State, county, city, or township—where it is not so expressly provided, they may, in the discretion of the court, be removed from office.

See Pol. Code, secs. 841 et seq.

§ 662. No person is punishable for an omission to perform an act, where such act has been performed by another person acting in his behalf, and competent by law to perform it.

§ 663. Any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was perpetrated by such person in pursuance of such attempt, unless the court, in its discretion, discharges the jury and directs such person to be tried for such crime.

§ 664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is punishable, where no provision is made by law for the punishment of such attempts, as follows:

1. If the offense so attempted is punishable by imprisonment in the State prison for five years, or more, or by imprisonment in the county jail, the person guilty of such attempt is punishable by imprisonment in the State prison, or in a county jail, as the case may be, for a term not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted.

2. If the offense so attempted is punishable by imprisonment in the State prison for any term less than five years, the person guilty of such attempt is punishable by imprisonment in the county jail for not more than one year.

3. If the offense so attempted is punishable by a fine, the offender convicted of such attempt is punishable by a fine not exceeding one-half the largest fine which may be imposed upon a conviction of the offense so attempted.

4. If the offense so attempted is punishable by imprisonment and by a fine, the offender convicted of such attempt may be punished by both imprisonment and fine, not exceeding one-half the longest term of imprisonment and one-half the largest fine which may be imposed upon a conviction for the offense so attempted.

Attempts included in secs. 216, 217, 220-222 are not included in this section.

§ 665. The last two sections do not protect a person who, in attempting unsuccessfully to commit a crime, accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

§ 666. Every person who, having been convicted of any offense punishable by imprisonment in the State prison commits any crime after such conviction, is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that, upon a first conviction, an offender would be punishable by imprisonment in the State prison for any term exceeding five years, such person is punishable by imprisonment in the State prison not less than ten years.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for five years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State prison not exceeding ten years.

3. If the subsequent conviction is for petit larceny, or any attempt to commit an offense which, if committed, would be punishable by imprisonment in the State prison not exceeding five years, then the person convicted of such subsequent offense is punishable by imprisonment in the State prison not exceeding five years.

Previous conviction, duty of jury to find on: See sec. 1158, post.

Practice on confessing previous conviction: Secs. 1093, 1158, post.

§ 667. Every person who, having been convicted of petit larceny, or of an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State prison, commits any crime after such conviction, is punishable as follows:

1. If the subsequent offense is such that, upon a first conviction, the offender would be punishable by imprisonment in the State prison for life, at the discretion of the court, such person is punishable by imprisonment in such prison during life.

2. If the subsequent offense is such that, upon a first conviction, the offender would be punishable

by imprisonment in the State prison for any term less than for life, such person is punishable by imprisonment in such prison for the longest term prescribed, upon a conviction for such first offense.

3. If the subsequent conviction is for petit larceny, or for an attempt to commit an offense which, if perpetrated, would be punishable by imprisonment in the State prison, then such person is punishable by imprisonment in such prison not exceeding five years.

See ante, sec. 654.

§ 668. Every person who has been convicted in any other State, government, or country, of an offense which, if committed within this State, would be punishable by the laws of this State by imprisonment in the State prison, is punishable for any subsequent crime committed within this State in the manner prescribed in the last two sections, and to the same extent as if the first conviction had taken place in a court of this State.

See ante, sec. 654. See also, sec. 656.

§ 669. When any person is convicted of two or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction must commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

§ 670. The term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant at the place of imprisonment, and if, thereafter, during such term, the defendant by any legal means

is temporarily released from such imprisonment, and subsequently returned thereto, the time during which he was at large must not be computed as part of such term.

§ 671. Whenever any person is declared punishable for a crime by imprisonment in the State prison for a term not less than any specified number of years, and no limit to the duration of such imprisonment is declared, the court authorized to pronounce judgment upon such conviction may, in its discretion, sentence such offender to imprisonment during his natural life, or for any number of years not less than that prescribed.

§ 672. Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding two hundred dollars, in addition to the imprisonment prescribed.

§ 673. A sentence of imprisonment in a State prison for any term less than for life suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment.

§ 674. A person sentenced to imprisonment in the State prison for life is thereafter deemed civilly dead.

§ 675. The provisions of the last two preceding sections must not be construed to render the persons therein mentioned incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property. [Amendment approved March 30, 1874; Amendments 1873-4, p. 435. In effect July 1, 1874.]

§ 676. The person of a convict sentenced to imprisonment in the State prison is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted or sentenced.

§ 677. No conviction of any person for crime works any forfeiture of any property, except in cases in which a forfeiture is expressly imposed by law; and all forfeitures to the people of this State, in the nature of a deodand, or where any person shall flee from justice, are abolished.

§ 678. Whenever in this Code the character or grade of an offense, or its punishment, is made to depend upon the value of the property, such value shall be estimated exclusively in United States gold coin. New section approved March 30, 1874; Amendments 1873-4, p. 435. In effect July 1, 1874.]

§ 679. Any person or corporation within this State, or agent or officer on behalf of such person or corporation, who shall hereafter coerce or compel any person or persons to enter into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation, shall be guilty of a misdemeanor. [New section approved March 14, 1893; Stats. 1893, p. 176.]

PART II.

OF CRIMINAL PROCEDURE.

(§§ 681-1570.)

Penal Code—21.

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PRELIMINARY PROVISIONS.

- § 681. No person punishable but on legal conviction.
- § 682. Public offenses, how prosecuted.
- § 683. Criminal action defined.
- § 684. Parties to a criminal action.
- § 685. The party prosecuted known as defendant.
- § 686. Rights of defendant in a criminal action.
- § 687. Second prosecution for the same offense prohibited.
- § 688. No person to be a witness against himself in a criminal action, or to be unnecessarily restrained.
- § 689. No person to be convicted but upon verdict or judgment.

§ 681. No person can be punished for a public offense, except upon a legal conviction in a court having jurisdiction thereof.

Constitutional guaranty: Art. 1, sec. 13, Const. Cal.

Conviction of public offense: See post, sec. 689.

The conviction in this state may be had: 1. By verdict of a jury; 2. On confession by defendant in open court; 3. By judgment of an authorized court in certain cases, without confession, or the verdict of a jury: See sec. 689.

The rights of persons charged with crime are secured to them by section 13, article 1, of the constitution.

§ 682. Every public offense must be prosecuted by indictment or information, except—

1. Where proceedings are had for the removal of civil officers of the State.

2. Offenses arising in the militia when in actual service, and in the land and naval forces in time of war, or which the State may keep, with the consent of Congress, in time of peace.

3. Offenses tried in justices' and police courts. [Amendment approved April 9, 1880; Amendments 1880, p. 10. In effect April 9, 1880.]

Prosecution: See Const. Cal. art. 1, secs. 8, 13.

Courts-martial: See Pol. Code, secs. 2076-2084.

§ 683. The proceedings by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

§ 684. A criminal action is prosecuted in the name of the people of the State of California, as a party, against the person charged with the offense.

§ 685. The party prosecuted in a criminal action is designated in this Code as the defendant.

§ 686. In a criminal action the defendant is entitled—

1. To a speedy and public trial.
2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.
3. To produce witnesses on his behalf, and to be confronted with the witnesses against him, in the presence of the court, except that where the charge has been preliminarily examined before a committing magistrate, and the testimony taken down by question and answer in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness; or where the testimony of a witness on the part of the people, who is unable to give security for his appearance, has been taken conditionally in the like manner in the presence of the defendant, who has, either in person or by counsel, cross-examined or had an opportunity to cross-examine the witness, the deposition of

such witness may be read, upon its being satisfactorily shown to the court that he is dead or insane, or cannot with due diligence be found within the State.

See Const. Cal. art. 1, sec. 13.

Depositions as evidence: Secs. 869, 1345, 1362.

§ 687. No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and convicted or acquitted.

See Const. Cal. art. 1, sec. 13, U. S. Const., Amend. 5.

Dismissal no bar: See sec. 999.

§ 688. No person can be compelled, in a criminal action, to be a witness against himself; nor can a person charged with a public offense, be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

§ 689. No person can be convicted of a public offense unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty, or upon judgment against him upon a demurrer in the case mentioned in section one thousand and eleven, or upon a judgment of a court, a jury having been waived, in a criminal case not amounting to felony. [Amendment approved April 25, 1880; Amendments 1880, p. 4. In effect immediately.]

TITLE I.

OF THE PREVENTION OF PUBLIC OFFENSES.

Chapter I. Of Lawful Resistance, §§ 692-4.

- II. Of the Intervention of the Officers of Justice, §§ 697-8.
- III. Security to Keep the Peace, §§ 701-14.
- IV. Police in Cities and Towns, and Their Attendance at Exposed Places, §§ 719-720.
- V. Suppression of Riots, §§ 723-33.

CHAPTER I.

OF LAWFUL RESISTANCE.

§ 692. Lawful resistance, by whom made.

§ 693. By the party, in what cases and to what extent.

§ 694. By other parties, in what cases.

§ 692. Lawful resistance to the commission of a public offense may be made—

- 1. By the party about to be injured.
- 2. By other parties.

See Civ. Code, secs. 23-26; 43-50.

§ 693. Resistance sufficient to prevent the offense may be made by the party about to be injured:

- 1. To prevent an offense against his person, or his family, or some member thereof.
- 2. To prevent an illegal attempt by force to take or injure property in his lawful possession.

§ 694. Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

CHAPTER II.

OF THE INTERVENTION OF THE OFFICERS OF JUSTICE.

§ 697. Intervention of officers, in what cases.

§ 698. Persons acting in their aid justified.

§ 697. Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.
2. By forming a police in cities and towns, and by requiring their attendance in exposed places.
3. By suppressing riots.

See secs. 701-714.

Subd. 2. Police force: See secs. 719, 720.

Officers authorized to preserve peace: Sec. 720.

Subd. 3. See post, secs. 817, 836-838.

§ 698. When the officers of justice are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

CHAPTER III.

SECURITY TO KEEP THE PEACE.

- § 701. Information of threatened offense.
- § 702. Examination of complainant and witnesses.
- § 703. Warrant of arrest.
- § 704. Proceedings on charges being controverted.
- § 705. Person complained of, when to be discharged.
- § 706. Security to keep the peace, when required.
- § 707. Effect of giving or refusing to give security.
- § 708. Person committed for not giving security.
- § 709. Undertaking to be filed in clerk's office.
- § 710. Security required for assault committed in court.
- § 711. Undertaking, when broken.
- § 712. Undertaking, when and how to be prosecuted.
- § 713. Evidence of breach.
- § 714. Security for the peace.

§ 701. An information may be laid before any of the magistrates mentioned in section eight hundred and eight, that a person has threatened to commit an offense against the person or property of another.

§ 702. When the information is laid before such magistrate, he must examine on oath the informer, and any witness he may produce, and must take their depositions in writing, and cause them to be subscribed by the parties making them.

§ 703. If it appears from the depositions that there is just reason to fear the commission of the offense threatened, by the person so informed against, the magistrate must issue a warrant, directed generally to the sheriff of the county, or any constable, marshal, or policeman in the State, reciting the substance of the information, and commanding the officer forthwith to arrest the person informed of and bring him before the magistrate.

§ 704. When the person informed against is brought before the magistrate, if the charge be controverted, the magistrate must take testimony in relation thereto. The evidence must be reduced to writing, and subscribed by the witnesses.

§ 705. If it appears that there is no just reason to fear the commission of the offense alleged to have been threatened, the person complained of must be discharged.

§ 706. If, however, there is just reason to fear the commission of the offense, the person complained of may be required to enter into an undertaking in such sum, not exceeding five thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to keep the peace toward the people of this State, and particularly toward the informer. The undertaking is valid and binding for six months, and may, upon the renewal of the information, be extended for a longer period, or a new undertaking may be required.

§ 707. If the undertaking required by the last section is given, the party informed of must be discharged. If he does not give it, the magistrate must commit him to prison, specifying in the warrant the requirement to give security, the amount thereof, and the omission to give the same.

§ 708. If the person complained of is committed for not giving the undertaking required, he may be discharged by any magistrate, upon giving the same.

§ 709. The undertaking must be filed by the magistrate, in the office of the clerk of the county.

§ 710. A person who, in the presence of a court or magistrate, assaults or threatens to as-

sault another, or to commit an offense against his person or property, or who contends with another with angry words, may be ordered by the court or magistrate to give security, as in this chapter provided, and if he refuse to do so, may be committed as provided in section seven hundred and seven.

§ 711. Upon the conviction of the person informed against of a breach of the peace, the undertaking is broken.

§ 712. Upon the district attorney's producing evidence of such conviction to the superior court of the county, the court must order the undertaking to be prosecuted, and the district attorney must thereupon commence an action upon it in the name of the people of this State. [Amendment approved April 12, 1880; Amendments 1880, p. 31. In effect April 12, 1880.]

§ 713. In the action, the offense stated in the record of conviction must be alleged as a breach of the undertaking, and such record is conclusive evidence of the breach.

§ 714. Security to keep the peace, or be of good behavior, cannot be required except as prescribed in this chapter.

CHAPTER IV.

POLICE IN CITIES AND TOWNS, AND THEIR ATTENDANCE AT EXPOSED PLACES.

§ 719. Organization and regulation of the police.

§ 720. Force to preserve the peace at public meetings.

§ 719. The organization and regulation of the police, in the cities and towns of this State, is governed by special laws.

Police insurance and pension bill: See post, Appendix, p. ,

Compensation of police: See post, Appendix, pp.

Increase of police force: See post, Appendix, p.

Vacations for police: See post, Appendix.

§ 720. The mayor or other officer having the direction of the police of a city or town must order a force, sufficient to preserve the peace, to attend any public meeting, when he is satisfied that a breach of the peace is reasonably apprehended.

See ante, sec. 701,

Suppression of riots: See sec. 697, subd. 3.

CHAPTER V.

SUPPRESSION OF RIOTS.

- § 723. Power of sheriff in overcoming resistance.
- § 724. Officer to certify to court the name of resisters, etc.
- § 725. Governor to order out military to aid in executing process.
- § 726. Magistrates and officers to command rioters to disperse.
- § 727. To arrest rioters if they do not disperse.
- § 728. Officers who may order out the military.
- § 729. Commanding officer and troops to obey the order.
- § 730. Armed force to obey orders of whom.
- § 731. Conduct of the troops.
- § 732. Governor may declare a county in a state of insurrection.
- § 733. May revoke the proclamation.
- § 734. Right to parade with arms.

§ 723. When a sheriff or other public officer authorized to execute process finds, or has reason to apprehend, that resistance will be made to the execution of the process, he may command as many male inhabitants of his county as he may think proper to assist him in overcoming the resistance, and, if necessary, in seizing, arresting, and confining the persons resisting, their aiders and abettors.

Peace officers: See post, sec. 877. See ante, sec. 697, subd. 3; secs. 701, 720.

§ 724. The officer must certify to the court from which the process issued, the names of the persons resisting, and their aiders and abettors, to the end that they may be proceeded against for their contempt of court.

§ 725. If it appears to the governor that the civil power of any county is not sufficient to enable the sheriff to execute process delivered to him, he must, upon the application of the sheriff

of the county, order such portion as shall be sufficient, or the whole, if necessary, of the organized National Guard, or enrolled militia of the State, to proceed to the assistance of the sheriff.

§ 726. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the State, immediately to disperse.

See ante, sec. 697, subd. 3.

§ 727. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present, or within the county.

See ante, sec. 723.

§ 728. When there is an unlawful or riotous assembly with the intent to commit a felony, or to offer violence to persons or property, or to resist by force the laws of the State or of the United States, and the fact is made known to the governor, by any justice of the supreme court, or the judge of the superior court, or sheriff of the county, or the mayor or chief of police of a city, or the president of the board of supervisors of the cities and counties of Sacramento and San Francisco, the governor may issue an order directed to the commanding officer of a division or brigade of the organized National Guard, or enrolled militia of the State, to order his command, or such part thereof as may be necessary, into active service, and to appear at a time and place therein.

specified, to aid the civil authorities in suppressing violence and enforcing the laws. [Amendment approved April 12, 1880; Amendments 1880, p. 32. In effect April 12, 1880.]

Governor may call out militia to execute laws, suppress insurrection, and repel invasion: Const. Cal. art. viii, sec. 1.

§ 729. The organized National Guard or enrolled militia, or such portion thereof as shall be called into active service, as provided in section seven hundred and twenty-eight, must appear at the time and place appointed, fully armed and equipped, and with not less than forty rounds of ball cartridge to each man, if infantry or cavalry, and with not less than twenty rounds of grape, canister, or round shot, if artillery.

§ 730. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, or arresting the offenders, and is placed under the temporary direction of any civil officer, as provided in section seven hundred and thirty-one, it must obey the order in relation thereto of such civil officer.

§ 731. Whenever any portion of the National Guard or enrolled militia shall have been called into active service to suppress an insurrection or rebellion, to disperse a mob, or to enforce the execution of the laws of the state or of the United States, the commanding officer shall use his own discretion with respect to the propriety of attacking or firing upon any mob or unlawful assembly; and his honest and reasonable judgment in the exercise of his duty shall be full protection, civilly and criminally, for any act or acts done while on duty. No officer who has been called out to sustain the civil authorities shall, under any pretense,

or in compliance with any order, fire blank cartridges upon any mob or unlawful assemblage under penalty of being cashiered by sentence of a court-martial. [Amendment approved March 26, 1895; Stats. 1895, 193. In effect March 26, 1895.]

The preceding sections, 728, 729, 730, 731, were amended so as to read as published in the text, by act of April 1, 1872, cited in note in lieu of section 433, ante, repealed.

§ 732. When the governor is satisfied that the execution of civil or criminal process has been forcibly resisted in any county by bodies of men, or that combinations to resist the execution of process by force exist in any county, and that the power of the county has been exerted, and has not been sufficient to enable the officers having the process to execute it, he may, on the application of the officer, or of the district attorney, or judge of a Superior Court of the county, by proclamation, published in such papers as he may direct, declare the county to be in a state of insurrection, and may order into the service of the State such number and description of the organized National Guard, or volunteer uniformed companies, or other militia of the State, as he deems necessary, to serve for such term and under the command of such officer as he may direct. [Amendment approved April 12, 1880; Amendments 1880, 32. In effect April 12, 1880.]

§ 733. The governor may, when he thinks proper, revoke the proclamation authorized by the last section, or declare that it shall cease at the time and in the manner directed by him.

See Const. Cal. art. v., sec. 5.

§ 734. It shall not be lawful for any body of men whatever, other than the regular organized

National Guard of this state, and the troops of the United States, to associate themselves together as a military company or organization, to drill or parade with arms in any city or town of this state, without the license of the governor thereof, which license may at any time be revoked; and provided further, that students in educational institutions where military science is a part of the course of instruction may, with the consent of the governor, drill and parade with arms in public under the superintendence of their instructor; provided, that nothing herein contained shall be construed so as to prevent benevolent or social organizations from wearing swords. And any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor and subject to arrest and punishment therefor. [New section approved March 26, 1895; Stats. 1895, 193. In effect March 26, 1895.]

TITLE II.

OF JUDICIAL PROCEEDINGS FOR THE REMOVAL OF
PUBLIC OFFICERS BY IMPEACHMENT OF OTHER-
WISE.

Chapter I. Of Impeachments, §§ 737-53.

II. Of the Removal of Civil Officers other-
wise than by Impeachment, §§ 758-
72.

CHAPTER I.

OF IMPEACHMENTS.

- § 737. Officers liable to impeachment.
- § 738. Articles, how prepared. Trial by Senate.
- § 739. Articles of impeachment.
- § 740. Time of hearing. Service on defendant.
- § 741. Service, how made.
- § 742. Proceedings on failure to appear.
- § 743. Defendant, after appearance, may answer or demur.
- § 744. If demurrer is overruled, defendant must answer.
- § 745. Senate to be sworn.
- § 746. Two-thirds necessary to a conviction.
- § 747. Judgment on conviction, how pronounced.
- § 748. The same.
- § 749. Nature of the judgment.
- § 750. Effect of judgment of suspension.
- § 751. Impeachment disqualifies until acquittal. Vacancy, how filled.
- § 752. Presiding officer when lieutenant-governor is impeached.
- § 753. Impeachment not a bar to indictment.

§ 737. The governor, lieutenant-governor, secretary of state, controller, treasurer, attorney-general, surveyor-general, chief justice, associate justices of the Supreme Court, and judges of the Su-

perior Courts, are liable to impeachment for any misdemeanor in office. [Amendment approved February 18, 1880; Amendments 1880, 3. In effect February 18th, 1880.]

Impeachment, who subject to: Const. Cal. art. iv., sec. 18.

Impeachment.—This section is taken from the first portion of section 18 of article 4 of the state constitution. See note to next section as to form of articles of impeachment, and the rules generally adopted in such proceedings.

§ 738. All impeachments must be by resolution adopted, originated in, and conducted by managers elected by the Assembly, who must prepare articles of impeachment, present them at the bar of the Senate, and prosecute the same. The trial must be had before the Senate, sitting as a court of impeachment.

See Const. Cal. art. iv., sec. 17; Fed. Const., art. 1, sec. 3, subd. 6.

Impeachment.—This section is also taken from article 4 section 17 of the state constitution. In this respect our constitution is similar to the federal constitution: Const. U. S., art. 1, sec. 3. The method of procedure generally adopted in preparing articles of impeachment in the Assembly is shown by the course adopted in the impeachment of G. W. Whitman, controller, and Henry Bates, treasurer, at the eighth session of the California legislature, 1856-7: See journals of assembly of that session, pp. 253, 289, 307, 318. See, as to form of articles of impeachment, Id. 375; Senate Journal, pp. 297, 303; Proceedings on Trial of William Hardy, by Sumner & Cutter, p. 14; Proceedings in the Trial of Andrew Johnson, p. 1.

§ 739. When an officer is impeached by the Assembly for a misdemeanor in office, the articles of

impeachment must be delivered to the president of the Senate.

§ 740. The Senate must assign a day for the hearing of the impeachment, and inform the Assembly thereof. The president of the Senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than ten days before the day fixed for the hearing.

§ 741. The service must be made upon the defendant personally, or if he cannot, upon diligent inquiry, be found within the State, the Senate, upon proof of that fact, may order publication to be made, in such manner as it may deem proper, of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

See Pol. Code, sec. 259.

§ 742. If the defendant does not appear, the Senate, upon proof of service or publication, as provided in the two last sections, may, of its own motion or for cause shown, assign another day for hearing the impeachment, or may proceed, in the absence of the defendant, to trial and judgment.

§ 743. When the defendant appears, he may in writing object to the sufficiency of the articles of impeachment, or he may answer the same by an oral plea of not guilty, which plea must be entered upon the journal, and puts in issue every material allegation of the articles of impeachment.

§ 744. If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the Senate who heard

the argument, the defendant must be ordered forthwith to answer the articles of impeachment. If he then pleads guilty, or refuses to plead, the Senate must render judgment of conviction against him. If he plead not guilty, the Senate must, at such time as it may appoint, proceed to try the impeachment.

§ 745. At the time and place appointed, and before the Senate proceeds to act on the impeachment, the secretary must administer to the president of the Senate, and the president of the Senate to each of the members of the Senate then present, an oath truly and impartially to hear, try, and determine the impeachment; and no member of the Senate can act or vote upon the impeachment, or upon any question arising thereon, without having taken such oath.

§ 746. The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes, and if two-thirds of the members elected do not concur in a conviction, he must be acquitted. [Amendment approved February 18, 1880; Amendments 1880, 3. In effect February 18th, 1880.]

The original section used the word "present" instead of "elected."

§ 747. After conviction the Senate must, at such time as it may appoint, pronounce judgment, in the form of a resolution entered upon the journals of the Senate.

§ 748. On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the Senate.

§ 749. The judgment may be that the defendant be suspended, or that he be removed from

office and disqualified to hold any office of honor, trust, or profit, under the State. [Amendment approved February 18, 1880; Amendments 1880, 3. In effect February 18, 1880.]

See Const. Cal. art. iv., sec. 18.

The original section had "and removed from office" after the word "suspended."

§ 750. If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

§ 751. Whenever articles of impeachment against any officer subject to impeachment are presented to the Senate, such officer is temporarily suspended from his office, and cannot act in his official capacity until he is acquitted. Upon such suspension of any officer other than the governor, his office must at once be temporarily filled by an appointment made by the governor, with the advice and consent of the Senate, until the acquittal of the party impeached; or, in case of his removal, until the vacancy is filled at the next election, as required by law.

§ 752. If the lieutenant-governor is impeached, notice of the impeachment must be immediately given to the Senate by the Assembly, that another president may be chosen.

§ 753. If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby. [Amendment approved February 18, 1880; Amendments 1880, 3. In effect February 18, 1880.]

This chapter is based on Stats, 1851, 212 et seq.; 1857, 17.

CHAPTER II.

OF THE REMOVAL OF CIVIL OFFICERS OTHERWISE
THAN BY IMPEACHMENT.

- § 758. Accusation to be presented by the grand jury.
- § 759. Form of accusation.
- § 760. To be transmitted to the district attorney, and copy served.
- § 761. Proceedings if defendant does not appear.
- § 762. Defendant may object to or deny the accusation.
- § 763. Form of objection.
- § 764. Manner of denial.
- § 765. If objections overruled, defendant must answer.
- § 766. Proceedings on plea of guilty, refusal to answer, etc.
- § 767. Trial by jury.
- § 768. State and defendant entitled to process for witnesses.
- § 769. Judgment upon conviction, and its form.
- § 770. Appeal, how taken. Defendant to be suspended and vacancy filled.
- § 771. Proceedings for the removal of a district attorney.
- § 772. Removal of public officers by summary proceedings.

§ 758. An accusation in writing against any district, county, township, or municipal officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed.

Removal of civil officers otherwise than by impeachment.—Under this section, which is taken from article 4, section 18, of the state constitution, all officers, other than those named in section 737 as liable to impeachment, are liable to be tried for misconduct in office, and if found guilty, removed therefrom. The constitutional provision just referred to reads: "All other civil officers shall be tried for misdemeanor in office in such manner as the legislature may provide."

§ 759. The accusation must state the offense charged, in ordinary and concise language, and without repetition.

§ 760. The accusation must be delivered by the foreman of the grand jury to the district attorney of the county, except when he is the officer accused, who must cause a copy thereof to be served upon the defendant, and require, by notice in writing of not less than ten days, that he appear before the Superior Court of the county, at a time mentioned in the notice, and answer the accusation. The original accusation must then be filed with the clerk of the court. [Amendment approved April 12, 1880; Amendments 1880, 32. In effect April 12, 1880.]

§ 761. The defendant must appear at the time appointed in the notice and answer the accusation, unless for some sufficient cause the court assign another day for that purpose. If he does not appear, the court may proceed to hear and determine the accusation in his absence.

§ 762. The defendant may answer the accusation either by objecting to the sufficiency thereof, or of any article therein, or by denying the truth of the same.

§ 763. If he objects to the legal sufficiency of the accusation, the objection must be in writing, but need not be in any specific form, it being sufficient if it presents intelligibly the grounds of the objection.

§ 764. If he denies the truth of the accusation, the denial may be oral and without oath, and must be entered upon the minutes.

§ 765. If an objection to the sufficiency of the accusation is not sustained, the defendant must answer thereto forthwith.

§ 766. If the defendant pleads guilty, or refuses to answer the accusation, the court must render judgment of conviction against him. If he denies the matters charged, the court must immediately, or at such time as it may appoint, proceed to try the accusation.

§ 767. The trial must be by a jury, and conducted in all respects in the same manner as the trial of an indictment for a misdemeanor.

§ 768. The district attorney and the defendant are respectively entitled to such process as may be necessary to enforce the attendance of witnesses, as upon a trial of an indictment.

§ 769. Upon a conviction, the court must, at such time as it may appoint, pronounce judgment that the defendant be removed from office; but, to warrant a removal, the judgment must be entered upon the minutes, and the causes of removal must be assigned therein.

§ 770. From a judgment of removal an appeal may be taken to the Supreme Court, in the same manner as from a judgment in a civil action; but until such judgment is reversed, the defendant is suspended from his office. Pending the appeal, the office must be filled as in case of a vacancy.

This chapter is based on Stats. 1851, 212 et seq.; 1863, 158.

§ 771. The same proceedings may be had on like grounds for the removal of a district attorney, except that the accusation must be delivered by the foreman of the grand jury to the clerk, and by

him to a judge of the Superior Court of the county, who must thereupon appoint some one to act as prosecuting officer in the matter, or place the accusation in the hands of the district attorney of an adjoining county, and require him to conduct the proceedings. [Amendment approved April 12, 1880; Amendments 1880, 32. In effect April 12, 1880.]

§ 772. When an accusation in writing, verified by the oath of any person, is presented to a Superior Court, alleging that any officer within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office, the court must cite the party charged to appear before the court at a time not more than ten nor less than five days from the time the accusation was presented; and on that day, or some other subsequent day not more than twenty days from that on which the accusation was presented, must proceed to hear, in a summary manner, the accusation, and evidence offered in support of the same, and the answer and evidence offered by the party accused; and if, on such hearing, it appears that the charge is sustained, the court must enter a decree that the party accused be deprived of his office, and must enter a judgment for five hundred dollars in favor of the informer, and such costs as are allowed in civil cases. [Amendment approved April 12, 1880; Amendments 1880, 33. In effect April 12, 1880.]

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TITLE III.

OF THE PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INDICTMENT, TO THE COMMIT- MENT, INCLUSIVE.

- Chapter I. Of the Local Jurisdiction of Public Offenses, §§ 777-95.
- II. Of the Time of commencing Criminal Actions, §§ 799-803.
- III. The Information, §§ 806-9.
- IV. The Warrant of Arrest, §§ 811-29.
- V. Arrest, by whom and how made, §§ 834-51.
- VI. Retaking after an Escape or Rescue, §§ 854-5.
- VII. Examination of the Case and Discharge of Defendant, or holding him to Answer, §§ 858-83.

CHAPTER I.

OF THE LOCAL JURISDICTION OF PUBLIC OFFENSES.

- § 777. Jurisdiction of offenses committed in this State.
- § 778. Offenses commenced without, but consummated within this State.
- § 779. When an inhabitant of this State is concerned in a duel out of the same, and a party wounded dies therein.
- § 780. Leaving the State to evade the statute against dueling.
- § 781. Offense committed partly in one county and partly in another.
- § 782. Committed on the boundary, etc., of two or more counties.
- § 783. Jurisdiction of an offense on board a vessel or car.
- § 784. Jurisdiction for kidnapping or abduction.
- § 785. Jurisdiction of an indictment for bigamy or incest.
- § 786. Property feloniously taken in one county and brought into another.
- § 787. Jurisdiction for escaping from prison.
- § 788. Jurisdiction for treason committed out of the State.
- § 789. Jurisdiction for stealing, etc., property, out of State, and brought therein.
- § 790. Jurisdiction for murder, etc., where the injury was inflicted in one county, and the party dies out of that county.
- § 791. Of an indictment against an accessory.
- § 792. Of principals who are not present, etc., at commission of the principal offense.
- § 793. Conviction or acquittal in another State a bar, where the jurisdiction is concurrent.
- § 794. Conviction or acquittal in another county a bar, where the jurisdiction is concurrent.
- § 795. Jurisdiction of prize-fight.

§ 777. Every person is liable to punishment by the laws of this State, for a public offense committed by him therein, except where it is by law cognizable exclusively in the courts of the United States.

§ 778. When the commission of a public offense, commenced without the State, is consummated within its boundaries, the defendant is liable to punishment therefor in this State, though he was out of the State at the time of the commission of the offense charged. If he consummated it in this State, through the intervention of an innocent or guilty agent, or any other means proceeding directly from himself, in such case the jurisdiction is in the county in which the offense is consummated.

§ 779. When an inhabitant or resident of this State, by previous appointment or engagement, fights a duel or is concerned as second therein, out of the jurisdiction of this State, and in the duel a wound is inflicted upon a person, whereof he dies in this State, the jurisdiction of the offense is in the county where the death happens.

§ 780. When an inhabitant of this State leaves the same for the purpose of evading the operation of the provisions of the Code relating to dueling and challenges to fight, with the intent or for the purpose of doing any of the acts prohibited therein, the jurisdiction is in the county of which the offender was an inhabitant when the offense was committed.

§ 781. When a public offense is committed in part in one county and in part in another, or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the jurisdiction is in either county.

§ 782. When a public offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county.

§ 783. When an offense is committed in this State, on board a vessel navigating a river, bay, slough, lake, or canal, or lying therein, in the prosecution of her voyage, the jurisdiction is in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage terminates; and when the offense is committed in this State, on a railroad train or car prosecuting its trip, the jurisdiction is in any county through which the train or car passes in the course of her trip, or in the county where the trip terminates. [Amendment approved January 28, 1876; Amendments 1875-6, 116. In effect in 60 days.]

§ 784. The jurisdiction of a criminal action—

1. For forcibly and without lawful authority seizing and confining another, or inveigling or kidnapping him, with intent, against his will, to cause him to be secretly confined or imprisoned in this State, or to be sent out of the State, or from one county to another or to be sold as a slave, or in any way held to service; or,

2. For decoying, taking, or enticing away a child under the age of twelve years, with intent to detain and conceal it from its parent, guardian, or other person having the lawful charge of the child; or,

3. For inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for the purpose of prostitution; or,

4. For taking away any female, under the age of sixteen years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of concubinage or prostitution;

—is in the county in which the offense is committed, or out of which the person upon whom the of-

fense, was committed may, in the commission of the offense, have been brought, or in which an act was done by the defendant in instigating, procuring, promoting, or aiding in the commission of the offense, or in abetting the parties concerned therein. [Amendment approved April 9, 1880; Amendments 1880, 11. In effect April 9, 1880.]

Enticing away children: Sec. 278.

Enticing away unmarried female: Secs. 266, 267.

§ 785. When the offense, either of bigamy or incest, is committed in one county and the defendant is apprehended in another, the jurisdiction is in either county.

§ 786. When property taken in one county by burglary, robbery, larceny, or embezzlement, has been brought into another, the jurisdiction of the offense is in either county. But if at any time before the conviction of the defendant in the latter, he is indicted in the former county, the sheriff of the latter county must, upon demand, deliver him to the sheriff of the former.

Property feloniously taken in one county and brought into another: See sec. 27, subd. 2.

Bringing stolen property into the State: See sec. 789.

§ 787. The jurisdiction of a criminal action for escaping from prison is in any county of the State. [Amendment approved April 9, 1880; Amendments 1880, 11. In effect April 9, 1880.]

The words "criminal action" are here substituted for the word "indictment" in the original.

§ 788. The jurisdiction of a criminal action for treason, when the overt act is committed out of the State, is in any county of the State. [Amend-

ment approved April 9, 1880; Amendments 1880, 11. In effect April 9, 1880.]

Similar amendment as in last section.

Crime committed by person out of state: Sec. 27, subd. 2.

§ 789. The jurisdiction of a criminal action for stealing in any other State the property of another, or receiving it, knowing it to have been stolen, and bringing the same into this State, is in any county into or through which such stolen property has been brought. [Amendment approved April 9, 1880; Amendments 1880, 11. In effect April 9, 1880.]

See ante, sec. 497.

Similar amendment as in section 787.

Taking stolen property from one county to another: Sec. 786.

§ 790. The jurisdiction of a criminal action for murder or manslaughter, when the injury which caused the death was inflicted in one county, and the party injured dies in another county or out of the State, is in the county where the injury was inflicted. [Amendment approved April 9, 1880; Amendments 1880, 11. In effect April 9, 1880.]

Similar amendment as in section 787.

§ 791. In the case of an accessory in the commission of a public offense, the jurisdiction is in the county where the offense of the accessory was committed, notwithstanding the principal offense was committed in another county.

See ante, secs. 31, 32.

§ 792. The jurisdiction of a criminal action against a principal in the commission of a public offense, when such principal is not present at the commission of the principal offense, is in the same

county it would be under this Code if he were so present and aiding and abetting therein. [Amendment approved April 9, 1880; Amendments 1880, 11. In effect April 9th, 1880.]

Similar amendment as in section 787.

§ 793. When an act charged as a public offense is within the jurisdiction of another State or country, as well as of this State, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this State.

§ 794. When an offense is within the jurisdiction of two or more counties, a conviction or acquittal thereof in one county is a bar to a prosecution or indictment therefor in another.

§ 795. The jurisdiction of a violation of sections four hundred and twelve, four hundred and thirteen, and four hundred and fourteen of the Penal Code, or a conspiracy to violate either of said sections, is in any county, first, in which any act is done toward the commission of the offense; or, second, into, out of, or through which the offender passed to commit the offense; or, third, where the offender is arrested. [New section approved March 7th, 1874; Amendments 1873-4, 466. In effect in 60 days.]

CHAPTER II.

OF THE TIME OF COMMENCING CRIMINAL ACTIONS.

§ 799. Prosecution for murder may be commenced at any time.

§ 800. Limitation of three years in all other felonies.

§ 801. Limitation of one year in misdemeanors.

§ 802. Exception when the defendant is out of the State.

§ 803. Indictment found, when presented and filed.

§ 799. There is no limitation of time within which a prosecution for murder, the embezzlement

of public moneys, and the falsification of public records must be commenced. Prosecution for murder may be commenced at any time after the death of the person killed, and for the embezzlement of public money or the falsification of public records, at any time after the discovery of the crime. [Amendment approved March 20, 1891; Stats. 1891, 192.]

§ 800. An indictment for any other felony than murder, the embezzlement of public money, or the falsification of public records, must be found, or an information filed, within three years after its commission. [Amendment approved March 20, 1891; Stats. 1891, 192.]

§ 801. An indictment for any misdemeanor must be found, or an information filed, within one year after its commission. [Amendment approved April 9, 1880; Amendments 1880, 12. In effect April 9th, 1880.]

§ 802. If, when the offense is committed, the defendant is out of the State, the indictment may be found or an information filed within the term herein limited after his coming within the State, and no time during which the defendant is not an inhabitant of, or usually resident within this State, is part of the limitation. [Amendment approved April 9, 1880; Amendments 1880, 12. In effect April 9, 1880.]

§ 803. An indictment is found within the meaning of this chapter, when it is presented by the grand jury in open court, and there received and filed.

CHAPTER III.

THE INFORMATION.

- § 806. Complaint defined.
- § 807. Magistrate defined.
- § 808. Who are magistrates.
- § 809. Filing information.

§ 806. The complaint is the allegation in writing made to a court or magistrate that a person has been guilty of some designated offense. [Amendment approved April 9, 1880; Amendments 1880, 12. In effect April 9, 1880.]

See ante, sec. 701.

Changes in head-notes.—The legislature of 1880 changed the name of the "allegation in writing," mentioned in this section, from "the information" to "the complaint." No change was made, however, in the head-note to chapter 3 of title 3, of which section 806 is a part. As to the importance of head-notes, see sec. 4, ante.

§ 807. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

§ 808. The following persons are magistrates:

1. The justices of the Supreme Court.
2. The judges of the Superior Courts.
3. Justices of the peace.
4. Police magistrates in towns or cities.

[Amendment approved March 12, 1880; Amendments 1880, 7. In effect March 12, 1880.]

§ 809. When a defendant has been examined and committed, as provided in section eight hundred and seventy-two of this Code, it shall be the duty of the district attorney, within thirty days

thereafter, to file in the Superior Court of the county in which the offense is triable, an information charging the defendant with such offense. The information shall be in the name of the People of the State of California, and subscribed by the district attorney, and shall be in form like an indictment for the same offense. [New section approved April 9, 1880; Amendments 1880, 12. In effect April 9, 1880.]

CHAPTER IV.

THE WARRANT OF ARREST.

- § 811. Examination of the prosecutor and his witnesses upon the information.
- § 812. Depositions, what to contain.
- § 813. When warrant may issue.
- § 814. Form of warrant.
- § 815. Name or description of the defendant in the warrant, and statement of the offense.
- § 816. Warrant to be directed to and executed by peace officer.
- § 817. Who are peace officers.
- § 818. To what peace officers warrants are to be directed.
- § 819. Same; and when and how executed in another county.
- § 820. Indorsement on warrant, for service in another county.
- § 821. Defendant to be taken before the magistrate issuing the warrant, etc.
- § 822. Defendant arrested for misdemeanor in another county, to be admitted to bail.
- § 823. Proceedings on taking bail from the defendant in such cases.
- § 824. When bail is not given. When magistrate who issued warrant cannot act.
- § 825. No delay in taking defendant before magistrate.
- § 826. Proceedings where defendant is taken before another magistrate.
- § 827. Proceedings for offenses triable in another county.
- § 828. Duty of officer.
- § 829. Admission to bail.

811. When an information is laid before a magistrate of the commission of a public offense, triable within the county, he must examine on oath the informant or prosecutor, and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Magistrates defined: See sec. 808. As to examination on commission, see post, secs. 1349 et seq.

§ 812. The deposition must set forth the facts stated by the prosecutor and his witnesses, tending to establish the commission of the offense and the guilt of the defendant.

§ 813. If the magistrate is satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, he must issue a warrant of arrest.

§ 814. A warrant of arrest is an order in writing, in the name of the people, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

County of —.

The People of the State of California to any sheriff, constable, marshal, or policeman of said State, or of the County of —:

Information on oath having been this day laid before me, by A. B., that the crime of — (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

Dated at —, this — day of —, eighteen —.
Before whom to be taken: See sec. 824.

§ 815. The warrant must specify the name of the defendant, or, if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state the time of issuing it, and the county, city or town where it is issued, and be signed by the magistrate, with his name of office.

§ 816. The warrant must be directed to and executed by a peace officer.

§ 817. A peace officer is a sheriff of a county, or a constable, marshal, or policeman of a township, city or town.

§ 818. If a warrant is issued by a justice of the Supreme Court, or judge of a Superior Court, it may be directed generally to any sheriff, constable, marshal, or policeman in the State, and may be executed by any of those officers to whom it may be delivered. [Amendment approved April 12, 1880; Amendments 1880; 33. In effect April 12, 1880.]

§ 819. If it is issued by any other magistrate, it may be directed generally to any sheriff, constable, marshal, or policeman in the county in which it is issued, and may be executed in that county; or, if the defendant is in another county, it may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant, signed by him, with his name of office, and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the county of —" (naming the county).

§ 820. The indorsement mentioned in the last section cannot, however, be made unless the warrant of arrest be accompanied with a certificate of the clerk of the county where such warrant was issued, under the seal of the Superior Court thereof, as to the official character of the magistrate, or, unless upon the oath of a credible witness, in writing, indorsed on or annexed to the warrant, proving the handwriting of the magistrate by whom it was issued. Upon such proof, the magistrate indorsing the warrant is exempted from liability to a civil or criminal action, though it afterwards appear that the warrant was illegally or improperly issued. [Amendment approved April 12, 1880; Amendments, 1880, 33. In effect April 12, 1880.]

§ 821. If the offense charged is a felony, the officer making the arrest must take the defendant before the magistrate who issued the warrant, or some other magistrate of the same county, as provided in section eight hundred and twenty-four.

Bail—Defendant must be taken before magistrate who issued warrant: Sec. 824.

§ 822. If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, upon being required by the defendant, take him before a magistrate in that county, who must admit the defendant to bail, and take bail from him accordingly.

§ 823. On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

§ 824. If, on the admission of the defendant to bail, the bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or, in case of his absence or inability to act, before the nearest or most accessible magistrate in the same county, and must at the same time deliver to the magistrate the warrant with his return thereon indorsed and subscribed by him.

§ 825. The defendant must in all cases be taken before the magistrate without unnecessary delay, and any attorney-at-law entitled to practice in courts of record of California, may, at the request

of the prisoner after such arrest, visit the person so arrested. [Amendment approved April 9, 1880; Amendments 1880, 30. In effect April 9, 1880.]

The amendment added all after "delay."

§ 826. If the defendant is brought before a magistrate other than the one who issued the warrant, the depositions on which the warrant was granted must be sent to that magistrate, or, if they cannot be procured, the prosecutor and his witnesses must be summoned to give their testimony anew.

§ 827. When an information is laid before a magistrate of the commission of a public offense triable in another county of the State, but showing that the defendant is in the county where the information is laid, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the depositions of the informant or prosecutor, and of the witnesses who may have been produced, must be delivered by the magistrate to the officer to whom the warrant is delivered.

§ 828. The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the depositions and the warrant, with his return indorsed thereon, and the magistrate must then proceed in the same manner as upon a warrant issued by himself.

§ 829. If the offense charged in the warrant issued pursuant to section eight hundred and twenty-seven is a misdemeanor, the officer must, upon

being required by the defendant, take him before a magistrate of the county in which the warrant was issued, who must admit the defendant to bail, and immediately transmit the warrant, depositions, and undertaking, to the clerk of the court in which the defendant is required to appear.

CHAPTER V.

ARREST, BY WHOM AND HOW MADE.

- § 834. Arrest defined. By whom made.
- § 835. How an arrest is made and what restraint allowed.
- § 836. Arrests by peace officers.
- § 837. Arrests by private persons.
- § 838. Magistrates may order arrest.
- § 839. Persons making arrest may summon assistance.
- § 840. When the arrest may be made.
- § 841. Arrest, how made.
- § 842. Warrant must be shown, when.
- § 843. What force may be used.
- § 844. Doors and windows may be broken, when.
- § 845. Same.
- § 846. Weapons may be taken from persons arrested.
- § 847. Duty of a private person who has made an arrest.
- § 848. Duty of officer arresting with warrant.
- § 849. Person arrested without a warrant to be taken before a magistrate. Information to be filed.
- § 850. Arrest by telegraph.
- § 851. Same.

§ 834. An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

§ 835. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of an officer. The defendant must not be subjected to any more restraint than is necessary for his arrest and detention.

§ 836. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person—

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon a reasonable cause, or the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony.

Refusing to arrest: Sec. 142.

Warrant, by whom executed: Sec. 816.

Peace-officers: Sec. 817.

Arrest under warrant, duty of officer: Sec. 848.

Arrest without warrant, duty of officer: Sec. 849.

§ 837. A private person may arrest another—

1. For a public offense committed or attempted in his presence.

2. When the person arrested has committed a felony, although not in his presence.

3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

§ 838. A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

Magistrates, who are: Sec. 808.

§ 839. Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

§ 840. If the offense charged is a felony, the arrest may be made on any day, and at any time of day or night. If it is a misdemeanor, the arrest cannot be made at night, unless upon the direction of the magistrate, indorsed upon the warrant.

§ 841. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

§ 842. If the person making the arrest is acting under the authority of a warrant, he must show the warrant, if required.

§ 843. When the arrest is being made by an officer under the authority of a warrant, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all necessary means to effect the arrest.

§ 844. To make an arrest, a private person, if the offense be a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing him to be, after having demanded admittance and explained the purpose for which admittance is desired. [Approved March 30th, 1874: Amendments 1873-4, 435. In effect July 1st, 1874.]

§ 845. Any person who has lawfully entered a house for the purpose of making an arrest may break open the door or window thereof if detained therein, when necessary for the purpose of liber-

ating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

§ 846. Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

§ 847. A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him to a peace officer.

§ 848. An officer making an arrest, in obedience to a warrant, must proceed with the person arrested as commanded by the warrant, or as provided by law.

Warrant of arrest, form of: sec. 814.

§ 849. When an arrest is made without a warrant by a peace officer or private person, the person arrested must, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and an information, stating the charge against the person, must be laid before such magistrate.

§ 850. A justice of the supreme court, or a judge of a superior court, may, by an indorsement under his hand upon a warrant of arrest, authorize the service thereof by telegraph, and thereafter a telegraphic copy of such warrant may be sent by telegraph to one or more peace officers; and such copy is as effectual in the hands of any

officer, and he must proceed in the same manner under it, as though he held an original warrant issued by the magistrate making the indorsement. [Amendment approved April 12, 1880; Amendments 1880, p. 33. In effect April 12th, 1880.]

§ 851. Every officer causing telegraphic copies of warrants to be sent must certify as correct, and file in the telegraph office from which such copies are sent, a copy of the warrant and indorsement thereon, and must return the original with a statement of his action thereunder.

CHAPTER VI.

RETAKING AFTER AN ESCAPE OR RESCUE.

§ 854. May be at any time or in any place in the State.

§ 855. May break open door or window if admittance refused.

§ 854. If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the State.

Assisting escapes: Sec. 109.

§ 855. To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling-house, if, after notice of his intention, he is refused admittance.

See ante. § 844.

CHAPTER VII.

EXAMINATION OF THE CASE, AND DISCHARGE OF
THE DEFENDANT, OR HOLDING HIM TO ANSWER.

- § 858. Magistrate to inform the defendant of the charge, and his right to counsel.
- § 859. Time to send and sending for counsel.
- § 860. Examination, when to proceed.
- § 861. When to be completed. Postponement.
- § 862. On postponement, defendant to be committed or discharged on bail.
- § 863. Form of commitment.
- § 864. Depositions to be read on examination and subpoenas issued.
- § 865. Examination of witnesses to be in presence of defendant.
- § 866. Examination of defendant's witnesses.
- § 867. Exclusion and separation of witnesses.
- § 868. Who may be present at the examination.
- § 869. Testimony, how taken and authenticated.
- § 870. Deposition, by whom and how kept.
- § 871. Defendant, when and how discharged.
- § 872. When and how to be committed.
- § 873. Order for commitment.
- § 874. Certificate of bail being taken. [Repealed.]
- § 875. Order for bail on commitment.
- § 876. Commitment, how made and to whom delivered.
- § 877. Form of commitment.
- § 878. Undertaking of witnesses to appear.
- § 879. Security for the appearance of witnesses.
- § 880. Infants and married women may be required to give security.
- § 881. Witnesses to be committed on refusal to give security for their appearance.
- § 882. Witness unable to give security may be conditionally examined. Not applicable to prosecutor or accomplice.
- § 883. Magistrate to return depositions, etc., to the court.

§ 858. When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and

of his right to the aid of counsel in every stage of the proceedings.

§ 859. He must also allow the defendant a reasonable time to send for counsel, and postpone the examination for that purpose; and must, upon the request of the defendant, require a peace officer to take a message to any counsel in the township or city the defendant may name. The officer must, without delay and without fee, perform that duty.

Defendant's right to counsel.—The right to have the assistance of counsel is a constitutional one. Art. 1, sec. 13; see sec. 825.

§ 860. If the defendant requires the aid of counsel, the magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case.

§ 861. The examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, postpone it. The postponement cannot be for more than two days at each time, nor more than six days in all, unless by consent or on motion of the defendant.

§ 862. If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this Code, as security for his appearance at the time to which the examination is postponed.

§ 863. The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for ex-

amination to the sheriff of ——" If the sheriff is not present, the defendant may be committed to the custody of a peace officer.

§ 864. At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information. He must also issue subpoenas, subscribed by him, for witnesses within the State, required either by the prosecution or the defense.

§ 865. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

§ 866. When the examination of witnesses on the part of the people is closed, any witnesses the defendant may produce must be sworn and examined.

§ 867. While a witness is under examination, the magistrate may exclude all witnesses who have not been examined. He may also cause the witnesses to be kept separate, and to be prevented from conversing with each other until they are all examined.

§ 868. The magistrate must also, upon the request of the defendant, exclude from the examination every person except his clerk, the prosecutor and his counsel, the attorney-general, the district attorney of the county, the defendant and his counsel, and the officer having the defendant in custody.

See ante, sec. 867.

§ 869. The testimony of each witness, in cases of homicide, must be reduced to writing, as a deposition, by the magistrate, or under his direction; and in other cases upon the demand of the prose-

cuting attorney, or the defendant, or his counsel. The magistrate before whom the examination is had may, in his discretion, order the testimony and proceedings to be taken down in short-hand in all examinations herein mentioned, and for that purpose he may appoint a short-hand reporter. The deposition or testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence, and his business or profession.

2. It must contain the questions put to the witness, and his answers thereto, each answer being distinctly read to him as it is taken down, and being corrected or added to until it conforms to what he declares is the truth; except in cases where the testimony is taken down in short-hand, the answer or answers of the witness need not be read to him.

3. If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, must be stated.

4. The deposition must be signed by the witness, or if he refuses to sign it, his reason for refusing must be stated in writing as he gives it; except in cases where the deposition is taken down in short-hand, it need not be signed by the witness.

5. It must be signed and certified by the magistrate when reduced to writing by him, or under his direction, and when taken down in short-hand, the transcript of the reporter appointed as aforesaid, when written out in longhand writing and certified as being a correct statement of such testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings. The reporter shall, within ten days after the close of such examination (if the defendant be held to answer to the charge), trans-

cribe into long-hand writing his said short-hand notes, and certify and file the same with the county clerk of the county, or city and county, in which the defendant was examined, and shall in all cases file his original notes with said clerk. [In effect March 3rd, 1881.]

6. The reporter's compensation shall be fixed by the magistrate before whom the examination is had, and shall not exceed that now allowed reporters in the superior courts of this State, and shall be paid out of the treasury of the county, or the city and county, in which the examination is had, on the certificate and order of the said magistrate, [Amendment approved March 14, 1885. Stats. 1885, p. 131; repealed conflicting acts. In effect March 14th, 1885.]

§ 870. The magistrate or his clerk must keep the depositions taken on the information or on the examination, until they are returned to the proper court; and must not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the attorney-general, district attorney, or other prosecuting attorney, and the defendant and his counsel.

§ 871. If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate must order the defendant to be discharged, by an indorsement on the depositions and statement, signed by him, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged."

§ 872. If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe the defendant guilty thereof, the magistrate must make or indorse on the deposition an order, signed by him, to the following effect: "It appearing to me that the offense, in the within depositions mentioned (or any offense, according to the fact, stating generally the nature thereof) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer to the same, and committed to the sheriff of the county of —." [Amendment approved April 15, 1880; Amendments 1880, p. 37. In effect April 15th, 1880.]

See ante, sec. 809.

§ 873. If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the sheriff of the county of —."

§ 874. [Repealed. In effect April 15th, 1880.]

Section 874, relating to a certificate of bail being taken, was repealed by act of April, 15, 1880; Amendments 1880, 37. Took effect immediately.

§ 875. If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order: "And that he be admitted to bail in the sum of — dollars, and is committed to the sheriff of the county of — until he gives such bail." [Amendment approved April 15, 1880; Amendments 1880, 37. In effect April 15th, 1880.]

Bail generally: See secs. 1268 et seq.

§ 876. If the magistrate order the defendant to be committed, he must make out a commitment,

signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

§ 877. The commitment must be to the following effect:

County of — (as the case may be).

The People of the State of California to the Sheriff of the County of —:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this — day of —, eighteen —.

§ 878. On holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements are to be sent, or that he will forfeit the sum of five hundred dollars.

§ 879. When the magistrate or a judge of the court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

See ante, secs. 865, 869; post, sec. 882.

§ 880. Infants and married women, who are material witnesses against the defendant, may be required to procure sureties for their appearance, as provided in the last section.

§ 881. If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate must commit him to prison until he complies or is legally discharged.

§ 882. When, however, it satisfactorily appears by examination, on oath, of the witness, or any other person, that the witness is unable to procure sureties, he may be forthwith conditionally examined on behalf of the people. Such examination must be by question and answer, in the presence of the defendant, or after notice to him, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this Code to be conducted, and the witness thereupon be discharged; but this section does not apply to an accomplice in the commission of the offense charged. [Amendment approved March 14, 1878; Amendments 1877-8, 122. In effect March 14th, 1878.]

Constitutional provision.—The constitution provides that “the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial”: Sec. 13, art. 1.

§ 883. When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the clerk of the court at which

the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses, taken by him.

TITLE IV.

OF PROCEEDINGS AFTER COMMITMENT AND BEFORE INDICTMENT.

Chapter I. Preliminary Provisions, §§ 888-90.

II. Formation of the Grand Jury, §§ 894-910.

III. Powers and Duties of a Grand Jury, §§ 915-28.

IV. Presentment and Proceedings thereon, §§ 931-7.

CHAPTER I.

PRELIMINARY PROVISIONS.

§ 888. Offenses, how prosecuted.

§ 889. What by accusation or information.

§ 890. Indictments and accusations, in what court found.

§ 888. All public offenses triable in the superior courts must be prosecuted by indictment or information, except as provided in the next section. [In effect April 9th, 1880.]

§ 889. When the proceedings are had for the removal of district, county, municipal, or township officers, they may be commenced by an accusation or information, in writing, as provided in sections seven hundred and fifty-eight and seven hundred and seventy-two.

§ 890. All accusations, informations, or indictments against district, county, municipal, and

township officers, must be found or filed in the superior court. [Amendment approved April 12, 1880; Amendments 1880, 34. In effect April 12th, 1880.]

CHAPTER II.

FORMATION OF THE GRAND JURY.

- § 894. Who may challenge the panel or an individual juror.
- § 895. Cause of challenge to a panel.
- § 896. Cause of challenge to an individual grand juror.
- § 897. Manner of taking and trying challenges.
- § 898. Decision upon challenges.
- § 899. Effect of allowing a challenge to a panel.
- § 900. Effect of allowing a challenge to an individual juror.
- § 901. Objections can only be taken by challenge.
- § 902. Appointment of a foreman.
- § 903. Oath of foreman.
- § 904. Oath of other grand jurors.
- § 905. Charge of the court.
- § 906. Retirement of the grand jury. Discharge of.
- § 907. Special grand jury.
- § 908. Order for special grand jury.
- § 909. Order, how executed.
- § 910. Special grand jury, how formed.

§ 894. The people, or a person held to answer a charge for a public offense, may challenge the panel of a grand jury, or an individual juror.

See as to formation of grand jury, Code of Civ. Proc.

§ 895. A challenge to the panel may be interposed for one or more of the following causes only:

1. That the requisite number of ballots was not drawn from the jury-box of the county.
2. That notice of the drawing of the grand jury was not given.
3. That the drawing was not had in the presence of the officers designated by law.

§ 896. A challenge to an individual grand juror may be interposed for one or more of the following causes only:

1. That he is a minor.
2. That he is an alien.
3. That he is insane.
4. That he is a prosecutor upon a charge against the defendant.

5. That he is a witness on the part of the prosecution, and has been served with process or bound by an undertaking as such.

6. That a state of mind exists on his part in reference to the case, or to either party, which will prevent him from acting impartially and without prejudice to the substantial rights of the party challenging; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety, provided it satisfactorily appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him. [Amendment approved March 30th; Amendments 1873-4, 436. In effect July 1st, 1874.]

Setting aside indictment or information: sec. 995.

Subds. 5 and 6. See post, secs. 1072, 1073, 1074.

§ 897. The challenges mentioned in the last three sections may be oral or in writing, and must be tried by the court. [Amendment approved March 30th; Amendments 1873-4, 436. In effect July 1st, 1874.]

See post, sec. 1078.

§ 898. The court must allow or disallow the

challenge, and the clerk must enter its decisions upon the minutes.

See post, sec. 1083.

§ 899. If a challenge to the panel is allowed, the grand jury are prohibited from inquiring into the charge against the defendant, by whom the challenge was interposed. If, notwithstanding, they do so, and find an indictment against him, the court must direct it to be set aside.

§ 900. If a challenge to an individual grand juror is allowed, he cannot be present or take part in the consideration of the charge against the defendant who interposed the challenge, or the deliberations of the grand jury thereon. The grand jury must inform the court of a violation of this section, and it is punishable by the court as a contempt.

§ 901. A person held to answer to a charge for a public offense can take advantage of any objection to the panel or to an individual grand juror in no other mode than by challenge.

§ 902. From the persons summoned to serve as grand jurors and appearing, the court must appoint a foreman. The court must also appoint a foreman when the person already appointed is excused or discharged before the grand jury is dismissed.

§ 903. The following oath must be administered to the foreman of the grand jury: "You, as foreman of the grand jury, will diligently inquire into, and true presentment make, of all public offenses against the people of this State, committed or triable within this county, of which you shall have or can obtain legal evidence. You will keep your own counsel, and that of your fellows, and of

the government, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor any thing which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You will present no person through malice, hatred, or ill-will, nor leave any unpresented through fear, favor, or affection, or for any reward, or the promise or hope thereof; but in all your presentments you will present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, so help you God." [Amendment approved March 30th, 1874; Amendments 1873-4, 437. In effect July 1st, 1874.]

§ 904. The following oath must be immediately thereupon administered to the other grand jurors present: "The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God."

§ 905. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court must give them such information as it may deem proper, or as is required by law, as to their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury.

§ 906. The grand jury must then retire to a private room, and inquire into the offenses cognizable by them. On the completion of the business before them, they must be discharged by the court; but, whether the business is completed or not, they are discharged by the final adjournment of the court.

§ 907. If an offense is committed during the sitting of the court, after the discharge of the grand jury, the court may, in its discretion, direct an order to be entered that the sheriff summon another grand jury.

§ 908. The order must require the sheriff to summon at least nineteen persons, qualified to serve as grand jurors, to appear at a time specified, and a copy thereof, under the seal of the court, must by the clerk be delivered to the sheriff. [Amendment approved March 16, 1889; Stats. 1889, 214. In effect March 16, 1889.]

§ 909. The sheriff must execute the order and return it, with a list of names of the persons summoned.

§ 910. At the time appointed the list must be called over, and the names of those in attendance be written by the clerk on separate ballots and put into a box, from which a grand jury must be drawn.

CHAPTER. III.

POWERS AND DUTIES OF A GRAND JURY.

- § 915. Powers of grand jury.
- § 916. Presentment defined.
- § 917. Indictment defined.
- § 918. Foreman may administer oaths.
- § 919. Evidence receivable before the grand jury.
- § 920. Grand jury not bound to hear evidence for the defendant.
- § 921. Degree of evidence to warrant indictment.
- § 922. Grand jurors must declare their knowledge as to commission of public offense.
- § 923. Must inquire into cases of persons imprisoned, etc.
- § 924. Entitled to access to public prison, etc.
- § 925. When and from whom they may ask advice, and who may be present during their sessions.
- § 926. Secrets of grand jury to be kept, except, etc.
- § 927. Grand juror not to be questioned for his conduct, except, etc.
- § 928. Duties of grand jury.
- § 929. Grand jury may order district attorney to bring suit to recover moneys due the county.

§ 915. The grand jury must inquire into all public offenses committed or triable within the county, and present them to the court, either by presentment or by indictment.

Impaneling grand juries: Const. Cal., art. 1, sec. 8; Code Civ. Proc., secs. 241-243, post.

§ 916. A presentment is an informal statement in writing, by the grand jury, representing to the court that a public offense has been committed which is triable in the county, and that there is reasonable ground for believing that a particular individual named or described therein has committed it.

§ 917. An indictment is an accusation in writing, presented by the grand jury to a competent

court, charging a person with a public offense.

Indictment must contain what: Sec. 950.

Indictment, sufficiency of: Sec. 959.

§ 918. The foreman may administer an oath to any witness appearing before the grand jury.

§ 919. In the investigation of a charge for the purpose of either presentment or indictment, the grand jury can receive no other evidence than such as is given by witnesses produced and sworn before them, or furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in the third subdivision of section six hundred and eighty-six. The grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.

§ 920. The grand jury is not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

§ 921. The grand jury ought to find an indictment when all the evidence before them, taken together, if unexplained or uncontradicted, would, in their judgment, warrant a conviction by a trial jury.

§ 922. If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow-jurors, who must thereupon investigate the same.

§ 923. The grand jury must inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted; into the condition and management of the public prisons within the county; and into the willful and corrupt misconduct in office of public officers of every description within the county.

§ 924. They are also entitled to free access, at all reasonable times, to the public prisons, and to the examination, without charge, of all public records within the county.

§ 925. The grand jury may, at all times, ask the advice of the court, or the judge thereof, or of the district attorney; but unless such advice is asked, the judge of the court must not be present during the sessions of the grand jury. The district attorney of the county may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, and may interrogate witnesses before them whenever he thinks it necessary; the grand jury, on the demand of the district attorney, whenever criminal causes are being investigated before them, must appoint a competent stenographic reporter to report the testimony that may be given in such causes in shorthand, and reduce the same afterward, upon the request of the said district attorney, to longhand; a copy of the said testimony so taken must be delivered to the defendant in any such criminal cause upon the arraignment after indictment of the said defendant; the services of the said stenographic reporter is hereby constituted a charge against the county wherein the said grand jury may be impaneled; no other person than above specified is permitted to be present during the session of the grand jury, except the members and witnesses actually under examination, and no person must be permitted to be present during the ex-

pression of their opinions, or giving their votes upon any matter before them. [Amendment, approved March 27, 1897; Stats. 1897, ch. 142. In effect immediately.]

Act relating to interpreter before grand jury, see post, Appendix, p. 577.

§ 926. Every member of the grand jury must keep secret whatever he himself or any other grand juror may have said, or in what manner he or any other grand juror may have voted on a matter before them; but may, however be required by any court to disclose the testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any person, upon a charge against such person for perjury in giving his testimony, or upon trial therefor.

§ 927. A grand juror cannot be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty, in making an accusation or giving testimony to his fellow jurors.

§ 928. It shall be the duty of the grand jury annually to make a careful and complete examination of the books, records, and accounts of all the officers of the county, and especially those pertaining to the revenue, and report as to the facts they have found, with such recommendations as they may deem proper and fit; and if, in their judgment, the services of an expert are necessary, they shall have power to employ one, at an agreed compensation, not to exceed five dollars per day, payable as other county charges. The judge, on impanelment of such grand jury shall

charge them specially as to their duties under this section; provided, that if any grand jury shall, in the report above mentioned, comment upon any person or official who has not been indicted by the said grand jury, the said comments shall not be deemed to be privileged. [Amendment, approved March 27, 1897; Stats. 1897, ch. 142. In effect immediately.]

§ 929. The grand jury, after having investigated the books and accounts of the various officials of the county, as in the foregoing section provided, may order the district attorney of the said county to institute suit to recover any moneys that, in the judgment of the said grand jury may from any cause be due the county, and the order of the said grand jury, certified by the foreman of the said grand jury, filed with the county clerk of the said county, shall be full authority for the said district attorney to institute and maintain any such suit. [New section added March 27, 1897; Stats. 1897, ch. 142. In effect immediately.]

CHAPTER IV.

PRESENTMENT, AND PROCEEDINGS THEREON.

- § 931. Presentment must be by twelve grand jurors, etc.
- § 932. Must be presented to the court and filed.
- § 933. Court must direct a bench-warrant if facts constitute a public offense.
- § 934. Bench-warrant, by whom and how issued.
- § 935. Form of bench-warrant.
- § 936. Bench-warrant, how served.
- § 937. Proceedings of magistrate on defendant being brought before him.

§ 931. A presentment cannot be found without the concurrence of at least twelve grand jurors.

When so found, it must be signed by the foreman.

Post: Sec. 940.

§ 932. The presentment, when found, must be presented by the foreman, in presence of the grand jury, to the court, and must be filed with the clerk.

§ 933. If the facts stated in the presentment constitute a public offense, triable in the county, the court must direct the clerk to issue a bench-warrant for the arrest of the defendant.

§ 934. The clerk, on the application of the judge or district attorney, may accordingly, at any time after the order, whether the court be sitting or not, issue a bench-warrant, under his signature and the seal of the court, into one or more counties.

§ 935. The bench-warrant, upon presentment, must be substantially in the following form: County of ——. The People of the State of California to any sheriff, constable, marshal, or policeman in this State: A presentment having been made on the — day of —, eighteen —, to the Superior Court of the County of —, charging C. D. with the crime of —, (designating it generally) you are therefore commanded forthwith to arrest the above named C. D.: and to take him before E. F., a magistrate of this county; or, in case of his absence or inability to act, before the nearest and most accessible magistrate in this county. Given under my hand, with the seal of said court affixed, this — day of —, A. D. eighteen —. By order of the court. [Seal.] G. H., clerk. [In effect April 12th, 1880.]

§ 936. The bench-warrant may be served in any county, and the officer serving it must proceed thereon as upon a warrant of arrest on an information, except that when served in another county, it need not be indorsed by a magistrate of that county.

§ 937. The magistrate, when the defendant is brought before him, must proceed upon the charges contained in the presentment, in the same manner as upon a warrant of arrest on an information.

TITLE V.

OF THE INDICTMENT.

Chapter I. Finding and Presentment of the Indictment, §§ 940-945.

II. Rules of Pleading and Form of the Indictment, §§ 948-972.

CHAPTER I.

FINDING AND PRESENTMENT OF THE INDICTMENT.

§ 940. Indictment must be found by twelve jurors, indorsed, etc.

§ 941. If not found, depositions, etc., must be returned to court, etc.

§ 942. Effect of dismissal.

§ 943. Names of witnesses inserted at foot of indictment.

§ 944. Indictment, how presented and filed.

§ 945. Proceedings when defendant is not in custody.

§ 940. An indictment cannot be found without the concurrence of at least twelve grand jurors. When so found it must be indorsed, "A true bill," and the indorsement must be signed by the foreman of the grand jury.

§ 941. If twelve grand jurors do not concur in finding an indictment against a defendant who had been held to answer, the depositions and statement, if any, transmitted to them must be returned to the court, with an endorsement thereon, signed by the foreman, to the effect that the charge is dismissed.

§ 942. The dismissal of the charge does not prevent its resubmission to a grand jury as often as the court may direct. But without such direction it cannot be resubmitted.

§ 943. When an indictment is found, the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

§ 944. An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

§ 945. When an indictment is found against a defendant not in custody, the same proceedings must be had as are prescribed in sections nine hundred and seventy-nine to nine hundred and eighty-four, inclusive, against a defendant who fails to appear for arraignment.

CHAPTER II.

RULES OF PLEADING AND FORM OF THE INDICTMENT.

- § 948. Form of and rules of pleading.
- § 949. First pleading by the people is indictment, or information.
- § 950. Indictment, or information, what to contain.
- § 951. Form of.
- § 952. It must be direct and certain.
- § 953. When defendant is indicted by fictitious name, etc.
- § 954. Must charge but one offense and in one form, except where it may be committed by different means.
- § 955. Statement as to time when offense was committed.
- § 956. Statement as to person injured or intended to be.
- § 957. Construction of words used.
- § 958. Words used in a statute need not be strictly pursued.
- § 959. Indictment or information, when sufficient.
- § 960. Not insufficient for defect of form not tending to prejudice defendant.
- § 961. Presumptions of law, etc., need not be stated.
- § 962. Judgments, etc., how pleaded.
- § 963. Private statutes, how pleaded.
- § 964. Pleading for libel.
- § 965. Pleading for forgery, where instrument has been destroyed or withheld by defendant.
- § 966. Pleading for perjury or subornation of perjury.
- § 967. Pleading for larceny or embezzlement.
- § 968. Pleading for selling, exhibiting, etc., lewd and obscene books.
- § 969. Previous conviction of another offense. [Repealed.]
- § 970. Indictment against several, one or more may be acquitted.
- § 971. Distinction between accessory before the fact and principal abrogated.
- § 972. Accessory may be indicted and tried, though principal has not been.

§ 948. All the forms of pleading in criminal actions, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by this Code.

§ 949. The first pleading on the part of the people is the indictment or information. [Amendment approved April 9, 1880; Amendments 1880, p. 12. In effect April 9, 1880.]

The amendments of April 9, 1880, to the various sections of this chapter simply conform the reading to the proceeding by information.

Indictment: See sec. 959.

§ 950. The indictment or information must contain—

1. The title of the action, specifying the name of the court to which the same is presented, and the names of the parties.

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended. [Amendment approved April 9, 1880; Amendments 1880, p. 12. In effect April 9, 1880.]

Indictment defined: Sec. 917.

§ 951. It may be substantially in the following form: The People of the State of California against A. B., in the Superior Court of the county of —, the — day of —, A. D. eighteen —. A. B. is accused by the grand jury of the county of —, by this indictment, (or by the district attorney by this information) of the crime of (giving its legal appellation, such as murder, arson, or the like, or designating it as felony or misdemeanor), committed as follows: The said A. B., on the — day of — A. D. eighteen —, at the county of —, (here set forth the act or omission charged as an offense) contrary to the form, force, and effect of the statute in such case made and provided, and against the peace and dignity of the people of the State of

California. [Amendment approved April 9, 1880; Amendments 1880, p. 12. In effect April 9, 1880.]

See, also, sec. 959.

§ 952. It must be direct and certain, as it regards—

1. The party charged.

2. The offense charged.

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete defense.

§ 953. When a defendant is charged by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his being charged by the name mentioned in the indictment or information. [Amendment approved April 9, 1880; Amendments 1880, p. 13. In effect April 9, 1880.]

§ 954. The indictment or information must charge but one offense, but the same offense may be set forth in different forms under different counts, and, when the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count. [Amendment approved April 9, 1880; Amendments 1880, p. 13. In effect April 9, 1880.]

§ 955. The precise time at which the offense was committed need not be stated in the indictment or information, but it may be alleged to have been committed at any time before the finding or filing thereof, except where the time is a material ingredient in the offense. [Amendment approved April 9, 1880; Amendments 1880, p. 13. In effect April 9, 1880.]

See ante, secs. 800, 959.

§ 956. When an offense involves the commission of, or an attempt to commit, a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

§ 957. The words used in an indictment or information are construed in their usual acceptance in common language, except such words and phrases as are defined by law, which are construed according to their legal meaning. [Amendment approved April 9, 1880; Amendments 1880, p. 13. In effect April 9, 1880.]

Words and phrases defined by law: See ante, sec. 7.

§ 958. Words used in a statute to define a public offense need not be strictly pursued in the indictment or information, but other words conveying the same meaning may be used. [Amendment approved April 9, 1880; Amendments 1880, p. 13. In effect April 9, 1880.]

§ 959. The indictment or information is sufficient, if it can be understood therefrom—

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. If an indictment, that it was found by a grand jury of the county in which the court was held; or if an information, that it was subscribed and presented to the court by the district attorney of the county in which the court was held.

3. That the defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is to the jury or district attorney, as the case may be, unknown.

4. That the offense was committed at some

place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein.

5. That the offense was committed at some time prior to the time of finding the indictment or filing of the information.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case. [Amendment approved April 9, 1880; Amendments 1880, p. 13. In effect April 9, 1880.]

Form of indictment or information: See sec. 951.

Indictment for particular crime: See Particular Crime.

Finding of indictment: Sec. 940.

Statement of acts constituting the offense: See sec. 950.

Number of counts in indictment: See sec. 954.

§ 960. No indictment or information is insufficient, nor can the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form which does not tend to the prejudice of a substantial right or the defendant upon its merits. [Amendment approved April 9, 1880; Amendments 1880, p. 14. In effect April 9, 1880.]

§ 961. Neither presumptions or law, nor matters of which judicial notice is taken, need be stated in an indictment or information. [Amendment approved April 9, 1880; Amendments 1880, p. 14. In effect April 9, 1880.]

§ 962. In pleading a judgment or other determination of, or proceeding before, a court or officer of special jurisdiction, it is not necessary to state the facts constituting jurisdiction; but the judgment or determination may be stated as given or made, or the proceedings had. The facts constituting jurisdiction, however, must be established on the trial.

§ 963. In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

§ 964. An indictment or information for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment or information is founded; but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial. [Amendment approved April 9, 1880; Amendments 1880, p. 14. In effect April 9, 1880.]

§ 965. When an instrument which is the subject of an indictment or information for forgery has been destroyed or withheld by the act or the procurement of the defendant, and the fact of such destruction or withholding is alleged in the indictment or information, and established on the trial, the misdescription of the instrument is immaterial. [Amendment approved April 9, 1880; Amendments 1880, p. 14. In effect April 9, 1880.]

§ 966. In an indictment or information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controver-

sy or matter in respect to which the offense was committed, and in what court and before whom the oath alleged to be false was taken, and that the court, or the person before whom it was taken, had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment or information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. [Amendment approved April 9, 1880; Amendments 1880, p. 14. In effect April 9, 1880.]

See secs. 113, 127.

§ 967. In an indictment or information for the larceny or embezzlement of money, bank-notes, certificates of stock, or valuable securities, or for a conspiracy to cheat or defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank-notes, certificates of stock, or valuable securities, without specifying the coin, number, denomination, or kind thereof. [Amendment approved April 9, 1880; Amendments 1880, p. 15. In effect April 9, 1880.]

See ante, secs. 954, 958.

§ 968. An indictment or information for exhibiting, publishing, passing, selling, or offering to sell, or having in possession, with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper, or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper, or writing; but it is sufficient to state generally the fact of the lewdness or obscenity thereof. [Amendment approved April 9, 1880; Amendments 1880, p. 15. In effect April 9, 1880.]

§ 969. Section nine hundred and sixty-nine of said Code is hereby repealed. [In effect April 9, 1880.]

Section 969, relating to previous conviction of another offense, was repealed by act of April 9, 1880. Amendments 1880, 15; took effect immediately.

The repealed section was as follows: "Sec. 969. In charging in an indictment the fact of a previous conviction of a felony, or of an attempt to commit an offense which, if perpetrated, would have been a felony, or of petit larceny, it is sufficient to state: 'That the defendant, before the commission of the offense charged in this indictment, was in [giving the title of the court in which the conviction was had] convicted of a felony for attempt, etc., or of petit larceny].' If more than one previous conviction be charged in the indictment, the date of the judgment upon each conviction shall be stated, and not more than two previous convictions shall be charged in any one indictment. [Amendment, approved, March 30, 1874; Amendments, 1873-4, 438. Took effect July 1, 1874.]"

§ 970. Upon an indictment or information against several defendants, any one or more may be convicted or acquitted. [Amendment approved April 9, 1880; Amendments 1880, p. 15. In effect April 9, 1880.]

§ 971. The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried, and punished as principals, and no other facts need be alleged in

any indictment or information against such an accessory than are required in an indictment or information against his principal. [Amendment approved April 9, 1880; Amendments 1880, p. 15. In effect April 9, 1880.]

§ 972. An accessory to the commission of a felony may be prosecuted, tried, and punished, though the principal may be neither prosecuted nor tried, and though the principal may have been acquitted. [Amendment approved April 9, 1880; Amendments 1880, p. 15. In effect April 9, 1880.]

TITLE VI.

OF PLEADINGS AND PROCEEDINGS AFTER INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

Chapter I. Of the Arraignment of the Defendant, §§ 976-90.

II. Setting aside the Indictment, §§ 995-9.

III. Demurrer, §§ 1002-12.

IV. Plea, §§ 1016-25.

V. Transmission of Certain Indictments from the County Court to the District Court or Municipal Criminal Court of San Francisco, §§ 1028-30.

VI. Removal of the Action before Trial, §§ 1033-8.

VII. The Mode of Trial, §§ 1041-3.

VIII. Formation of the Trial Jury and the Calendar of Issues for Trial, §§ 1046-9.

IX. Postponement of the Trial, § 1052.

CHAPTER I.

OF THE ARRAIGNMENT OF THE DEFENDANT.

- § 976. Defendant must be arraigned in the court where the indictment is filed or transferred.
- § 977. Defendant, when to be present at arraignment.
- § 978. If in custody, to be brought before court.
- § 979. If discharged on bail, bench-warrant to issue.
- § 980. Bench-warrant, by whom and how issued.
- § 981. Form of bench-warrant.
- § 982. Directions in the bench-warrant.
- § 983. Bench-warrant, how served.
- § 984. Proceeding on giving bail in another county.
- § 985. Ordering defendant into custody or increasing bail when indictment is for felony.
- § 986. Defendant, if present when order made, to be committed; if not, bench-warrant to issue.
- § 987. Right to counsel on arraignment.
- § 988. Arraignment, how made.
- § 989. Proceedings on arraignment, when defendant is not indicted by his true name.
- § 990. Time allowed, and how defendant may answer on arraignment.

§ 976. When the indictment or information is filed, the defendant must be arraigned thereon before the court in which it is filed, unless the cause is transferred to some other county for trial. [Amendment approved April 9, 1880; Amendments 1880, p. 15. In effect April 9, 1880.]

The amendments of April 9, 1880, in this chapter simply conform the sections to the proceeding by information.

§ 977. If the indictment or information be for a felony, the defendant must be personally present; but if for a misdemeanor, he may appear upon the arraignment by counsel. [Amendment approved April 9, 1880; Amendments 1880, p. 16. In effect April 9, 1880.]

See Const. Cal., art. 1, sec. 13.

§ 978. When his personal appearance is necessary, if he is in custody, the court may direct, and the officer in whose custody he is must bring him before it to be arraigned.

§ 979. If the defendant has been discharged on bail, or has deposited money instead thereof, and do not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench-warrant for his arrest.

§ 980. The clerk, on the application of the district attorney, may, at any time after the order, whether the court is sitting or not, issue a bench-warrant to one or more counties.

§ 981. The bench-warrant upon the indictment or information must, if the offense is a felony, be substantially in the following form: County of _____. The People of the State of California to any sheriff, constable, marshal, or policeman in this State: An indictment having been found (or information filed) on the ____ day of _____, A. D. eighteen _____, in the Superior Court of the county of _____, charging C. D. with the crime of _____ (designating it generally); you are, therefore, commanded forthwith to arrest the above named C. D., and bring him before that court, (or if the indictment and information has been sent to another court, then before that court, naming it) to answer said indictment (or information); or if the court be not in session, that you deliver him into the custody of the sheriff of the county of _____.

Given under my hand, with the seal of said court affixed, this ____ day of _____, A. D. _____.

By order of said Court.

[Seal.]

E. F., Clerk.

[Amendment approved April 9, 1880; Amendments 1880, p. 16. In effect April 9, 1880.]

§ 982. The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the sheriff of the county in which the indictment is found or information filed, unless admitted to bail after an examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench-warrant a direction to the following effect: "Or, if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment, or information"; and the court, upon directing it to issue, must fix the amount of bail, and an indorsement must be made thereon and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of ——— dollars." [Amendment approved April 9, 1880; Amendments 1880, p. 16. In effect April 9, 1880.]

§ 983. The bench-warrant may be served in any county, in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county.

§ 984. If the defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

See Arrest, ante, secs. 841-851.

§ 985. When the information or indictment is for a felony, and the defendant, before the filing thereof, has given bail for his appearance to answer the charge, the court to which the indictment or information is presented, or in which it is

pending, may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order. [Amendment approved April 9, 1880; Amendments 1880, p. 16. In effect April 9, 1880.]

§ 986. If the defendant is present when the order is made, he must be forthwith committed. If he is not present, a bench-warrant must be issued and proceeded upon in the manner provided in this chapter.

§ 987. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Right to have counsel: Article 6 of the amendments to the constitution of the United States; art. 1, sec. 13, state constitution.

§ 988. The arraignment must be made by the court, or by the clerk or district attorney under its direction, and consists in reading the indictment or information to the defendant and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses, and asking him whether he pleads guilty or not guilty to the indictment or information. [Amendment approved April 9, 1880; Amendments 1880, p. 16. In effect April 9, 1880.]

See ante, secs. 858, 859, 976, and post, sec. 990.

§ 989. When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name, he must then declare his true name, or be proceeded against by the name in the indictment or information. If he

gives no other name, the court may proceed accordingly; but if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information or indictment may be had against him by that name, referring also to the name by which he was first charged therein. [Amendment approved April 9, 1880; Amendments 1880, p. 17. In effect April 9, 1880.],

See ante, sec. 988.

§ 990. If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one day, to answer the indictment or information. He may, in answer to the arraignment, move to set aside, demur, or plead to the indictment or information. [Amendment approved April 9, 1880; Amendments 1880, p. 17. In effect April 9, 1880.]

CHAPTER II.

SETTING ASIDE THE INDICTMENT.

§ 995. Indictment, when set aside on motion.

§ 996. Defendant waives objections, unless he makes the motion.

§ 997. Motion, when heard. If denied or granted, what proceedings are to be had.

§ 998. Effect of order for submission.

§ 999. Order no bar to another prosecution.

§ 995. The indictment or information must be set aside by the court in which the defendant is arraigned, upon his motion, in either of the following cases: If it be an indictment—

1. Where it is not found, indorsed, and presented as prescribed in this Code.

2. When the names of the witnesses examined before the grand jury, or whose depositions may have been read before them, are not inserted at the foot of the indictment, or indorsed thereon.

3. When a person is permitted to be present during the session of the grand jury, and when the charge embraced in the indictment is under consideration, except as provided in section nine hundred and twenty-five.

4. When the defendant had not been held to answer before the finding of the indictment, on any ground which would have been good ground for challenge, either to the panel or to any individual grand juror.

If it be on information—

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That it was not subscribed by the district attorney of the county. [Amendment approved April 26, 1880; Amendments 1880, p. 43. In effect April 26, 1880.]

The amendments of April 9, 1880, in this chapter are to conform to the proceeding by information.

See also, sec. 869.

§ 996. If the motion to set aside the indictment or information is not made, the defendant is precluded from afterward taking the objections mentioned in the last section. [Amendment approved April 9, 1880; Amendments 1880, p. 17. In effect April 9, 1880.]

§ 997. The motion must be heard at the time it is made, unless, for cause, the court postpones the hearing to another time. If the motion is denied, the defendant must immediately answer the indictment or information, either by demurring or pleading thereto. If the motion is granted,

the court must order that the defendant, if in custody, be discharged therefrom; or, if admitted to bail, that his bail be exonerated; or, if he has deposited money instead of bail; that the same be refunded to him, unless it directs that the case be resubmitted to the same or another grand jury, or that an information be filed by the district attorney; provided, that after such order of resubmission the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases, if, before indictment or information filed, he has not been examined and committed by a magistrate: [Amendment approved April 9, 1880; Amendments 1880, p. 17. In effect April 9, 1880.]

Resubmission of charge: See sec. 942.

Jeopardy: See sec. 687.

§ 998. If the court directs the case to be resubmitted, or an information to be filed, the defendant, if already in custody, must so remain, unless he is admitted to bail; or, if already admitted to bail, or money has been deposited instead thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment or information; and, unless a new indictment is found, or information filed before the next grand jury of the county is discharged, the court must, on the discharge of such grand jury, make the order prescribed by the preceding section. [Amendment approved April 9, 1880; Amendments 1880, p. 17. In effect April 9, 1880.]

The defendant is regarded as still held to answer, and may again challenge the grand jury, as in the first instance.

§ 999. An order to set aside an indictment or information, as provided in this chapter, is no bar to a future prosecution for the same offense.

[Amendment approved April 9, 1880; Amendments 1880, p. 18. In effect April 9, 1880.]

Jeopardy: See sec. 687.

CHAPTER III.

DEMURRER.

- § 1002. Pleading on part of defendant.
- § 1003. Demurrer or plea, when put in.
- § 1004. Grounds of demurrer.
- § 1005. Demurrer, how put in, and its form.
- § 1006. When heard.
- § 1007. Judgment on demurrer.
- § 1008. If allowed, bar to another prosecution, when.
- § 1009. If resubmission not ordered, defendant discharged, etc.
- § 1010. Proceedings, if submission ordered.
- § 1011. Proceedings, if demurrer is disallowed.
- § 1012. Objection, forming ground of demurrer, when taken.

§ 1002. The only pleading on the part of the defendant is either a demurrer or a plea.

§ 1003. Both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

Time to plead: Sec. 990.

§ 1004. The defendant may demur to the indictment or information, when it appears upon the face thereof, either—

1. If an indictment, that the grand jury by which it was found had no legal authority to inquire into the offense charged, by reason of its not being within the legal jurisdiction of the county; or, if an information, that the court has no jurisdiction of the offense charged therein.

2. That it does not substantially conform to the requirement of sections nine hundred and fifty, nine hundred and fifty-one, and nine hundred and fifty-two.

3. That more than one offense is charged.

4. That the facts stated do not constitute a public offense.

5. That it contains any matter, which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution. [Amendment approved April 9, 1880; Amendments 1880, p. 18. In effect April 9, 1880.]

Subd. 2. Specific requirements, etc.: See secs. 950, 951, 952, 954, 959; see subd. 4.

Waiver of objection by not demurring: See sec. 1008.

§ 1005. The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of objection to the indictment or information, or it must be disregarded. [Amendment approved April 9, 1880; Amendments 1880, p. 18. In effect April 9, 1880.]

§ 1006. Upon the demurrer being filed, the argument upon the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

§ 1007. Upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an order to that effect must be entered upon the minutes.

§ 1008. If the demurrer is allowed, the judgment is final upon the indictment or information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of the opinion that the objection on which the de-

murrer is allowed may be avoided in a new indictment or information, directs the case to be submitted to another grand jury, or directs a new information to be filed; provided, that after such order of resubmission, the defendant may be examined before a magistrate, and discharged or committed by him, as in other cases. [Amendment approved April 9, 1880; Amendments 1880, p. 18. In effect April 9, 1880.]

§ 1009. If the court does not permit the information to be amended, nor direct that an information be filed, or that the case be resubmitted, as provided in the preceding section, the defendant, if in custody, must be discharged, or if admitted to bail, his bail is exonerated, or if he has deposited money instead of bail, the money must be refunded to him. [Amendment approved April 9, 1880; Amendments 1880, p. 18. In effect April 9, 1880.]

§ 1010. If the court directs that the case be resubmitted, the same proceedings must be had thereon as are prescribed in sections nine hundred and ninety-seven and nine hundred and ninety-eight.

§ 1011. If the demurrer is disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may direct. If he does not plead, judgment may be pronounced against him.

See ante, sec. 689.

§ 1012. When the objections mentioned in section one thousand and four appear on the face of the indictment or information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment or information, or that the facts

stated do not constitute a public offense, may be taken at the trial, under the plea of not guilty, or after the trial, in arrest of judgment. [Amendment approved April 9, 1880; Amendments 1880, p. 19. In effect April 9, 1880.]

CHAPTER IV.

PLEA.

- § 1013. The different kinds of pleas.
- § 1017. Plea, how put in, and its form.
- § 1018. Plea of guilty, how put in, and when withdrawn.
- § 1019. What plea of not guilty puts in issue.
- § 1020. What may be given in evidence under plea of not guilty.
- § 1021. What is not a former acquittal.
- § 1022. What is a former acquittal.
- § 1023. Conviction or acquittal for a higher offense, effect of.
- § 1024. Defendant refusing to answer, plea of not guilty.
- § 1025. Previous convictions. [Repealed.]

§ 1016. There are four kinds of pleas to an indictment or information. A plea of—

1. Guilty.
2. Not guilty.
3. A former judgment of conviction or acquittal of the offense charged, which may be pleaded either with or without the plea of not guilty.
4. Once in jeopardy. [Amendment approved April 26, 1880; Amendments 1880, p. 44. In effect April 26, 1880.]

Subd. 4. Once in jeopardy is added by the amendment.

§ 1017. Every plea must be oral, and entered upon the minutes of the court in substantially the following form:

1. If the defendant plead guilty: "The defend-

ant pleads that he is guilty of the offense charged."

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offense charged."

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted) of the offense charged by the judgment of the court of — (naming it), rendered at — (naming the place), on the — day of —."

4. If he plead once in jeopardy: "The defendant pleads that he has been once in jeopardy for the offense charged (specifying the time, place, and court)." [Amendment approved April 26, 1880; Amendments 1880, p. 44. In effect April 26, 1880.]

Pleas generally: Sec. 1016.

Plea of guilty.—This plea can only be put in by the defendant himself in open court, unless upon indictment against a corporation, in which case it may be put in by counsel: Sec. 1018.

Insanity: Sec. 26, subd. 3.

Evidence under plea of not guilty: Sec. 1020.

§ 1018. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment or information against a corporation, in which case it may be put in by counsel. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted. [Amendment approved April 9, 1880; Amendments 1880, p. 19. In effect April 9, 1880.]

§ 1019. The plea of not guilty puts in issue every material allegation of the indictment or information. [Amendment approved April 9, 1880; Amendments 1880, p. 19. In effect April 9, 1880.]

§ 1020. All matters of fact tending to establish a defense, other than that specified in the third and fourth subdivisions of section one thousand and sixteen, may be given in evidence under a plea of not guilty. [Amendment approved April 26, 1880; Amendments 1880, p. 44. In effect April 26, 1880.]

§ 1021. If the defendant was formerly acquitted on the ground of variance between the indictment or information and the proof, or the indictment or information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense. [Amendment approved April 9, 1880; Amendments 1880, p. 19. In effect April 9, 1880.]

§ 1022. Whenever the defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding any defect in form or substance in the indictment or information on which the trial was had. [Amendment approved April 9, 1880; Amendments 1880, p. 19. In effect April 9, 1880.]

§ 1023. When the defendant is convicted or acquitted, or has been once placed in jeopardy upon an indictment or information, the conviction, acquittal, or jeopardy is a bar to another indictment or information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment or information. [Amendment approved April 26, 1880; Amendments 1880, p. 44. In effect April 26, 1880.]

See ante, sec. 1016, subd. 3.

§ 1024. If the defendant refuses to answer the indictment or information by demurrer or plea, a plea of not guilty must be entered. [Amendment approved April 9, 1880; Amendments 1880, p. 19. In effect April 9, 1880.]

§ 1025. Section one thousand and twenty-five of said Code is hereby repealed. [In effect April 9, 1880.]

Section 1025, relating to previous convictions, was repealed by act of April 9, 1880; Amendments 1880, 19 (Ban. ed. 165); took effect immediately.

The repealed section was as follows: "Sec. 1025. When a defendant, who is charged in the indictment with having suffered a previous conviction, pleads either guilty or not guilty of the offense for which he is indicted, he must be asked whether he has suffered such previous conviction. If he answers that he has, his answer shall be entered by the clerk in the minutes of the court, and shall, unless withdrawn by consent of the court, be conclusive of the fact of his having suffered such previous conviction in all subsequent proceedings. If he answers that he has not, his answer shall be entered by the clerk in the minutes of the court, and the question whether or not he has suffered such previous conviction shall be tried by the jury which tries the issue upon the plea of 'not guilty,' or in case of a plea of 'guilty,' by a jury impaneled for that purpose. The refusal of the defendant to answer is equivalent to a denial that he has suffered such previous conviction. In case the defendant pleads 'not guilty,' and answers that he has suffered the previous conviction, the charge of the previous conviction shall not be read to the jury, nor alluded to on the trial. [New section approved March 30, 1874; Amendments 1873-4, 439. Took effect July 1, 1874.]"

CHAPTER V.

TRANSMISSION OF CERTAIN INDICTMENTS FROM THE COUNTY COURT TO THE DISTRICT COURT, OR MUNICIPAL CRIMINAL COURT OF SAN FRAN- CISCO.

§ 1028. Transmission of indictments from the County to District Courts. [Repealed.]

§ 1029. Indictments against a superior judge.

§ 1030. Indictments transmitted to Municipal Criminal Court. [Repealed.]

§ 1028. Repealed. [In effect March 12, 1880.]

Section 1028, relating to the transmission of certain indictments from the county to the district court was repealed by act of March 12, 1880; Amendments 1880; 6 (Ban. ed. 27) took effect from passage.

§ 1029. When an indictment is found, or an information filed in a superior court against a judge thereof, a certificate of that fact must be transmitted by the clerk to the governor, who shall thereupon designate and direct a judge of the superior court of another county to preside at the trial of such indictment or information, and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. [Amendment approved March 12, 1880; Amendments 1880, p. 6. In effect March 12, 1880.]

§ 1030. [Repealed. In effect March 12, 1880.]

Section 1030, relating to the transmission of certain indictments to the municipal criminal court of San Francisco, was repealed by act of March 12, 1880; Amendments 1880, 6 (Ban. ed. 27); took effect from passage.

CHAPTER VI.

REMOVAL OF THE ACTION BEFORE TRIAL.

- § 1033. When action may be removed.
- § 1034. Application for removal, how made.
- § 1035. Application, when granted.
- § 1036. Order of removal.
- § 1037. Proceedings on removal, if defendant is in custody.
- § 1038. Proceedings on removal. Transmission of papers.

§ 1033. A criminal action may be removed from the court in which it is pending:

First—On the application of the defendant, on the ground that a fair and impartial trial cannot be had in the county where the action is pending.

Second.—On the application of the district attorney, on the ground that from any cause no jury can be obtained for the trial of the defendant in the county where the action is pending. [Amendment approved March 9, 1887; Stats. 1887, p. 61. In effect March 9, 1887.]

Change of venue in criminal cases.—Section 397 of the Code of Civil Procedure, providing for the change of the place of trial in civil actions, has no application to criminal cases. The only provisions of law providing for a removal of such cases from one county to another for trial are found in the Penal Code, sections 1033-1038, inclusive.

§ 1034. The application must be made in open court and in writing, verified by the affidavit of the defendant or of the district attorney, as the case may be, a copy of which application must be served upon the attorney of the adverse party at least one day prior to the hearing of the application. Whenever the affidavit of the defendant shows that he cannot safely appear in person

to make such application, because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney, and shall be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a felony, and he has not at the time of such application been arrested or given bail, or been arraigned, or pleaded, or demurred to the indictment or information. [In effect March 9, 1887.]

§ 1035. If the court be satisfied that the representations of the applicant are true, an order must be made transferring the action to the proper court of some convenient county, free from a like objection. [Amendment approved March 9, 1887; Stats. 1887, p. 61. In effect March 9, 1887.]

Stats. 1863, 158, sec. 14.

§ 1036. The order of removal must be entered upon the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

§ 1037. If the defendant is in custody, the order must direct his removal, and he must be forthwith removed by the sheriff of the county where he is imprisoned, to the custody of the sheriff of the county to which the action is removed.

§ 1038. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the or-

iginal pleadings or other papers before such court, the court from which the action is removed must at any time, upon application of the district attorney or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

CHAPTER VII.

THE MODE OF TRIAL.

§ 1041. Issue of fact defined.

§ 1042. How tried.

§ 1043. When presence of defendant is necessary on the trial.

§ 1041. An issue of fact arises:

1. Upon a plea of not guilty.

2. Upon a plea of a former conviction or acquittal of the same offense.

3. Upon a plea of once in jeopardy. [Amendment approved April 26, 1880; Amendments 1880, p. 45. In effect April 26, 1880.]

§ 1042. Issues of fact must be tried by jury, unless a trial by jury be waived in criminal cases not amounting to felony, by the consent of both parties expressed in open court and entered in its minutes. In cases of misdemeanor the jury may consist of twelve, or any number less than twelve upon which the parties may agree in open court. [Amendment approved February 25, 1880; Amendments 1880, p. 4. In effect February 25, 1880.]

In cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court: Const., art. 2, sec. 7.

Issue of fact defined: Code Civ Proc., sec. 590.

§ 1043. If the prosecution be for a felony, the defendant must be personally present at the trial; but if for misdemeanor, the trial may be had in the absence of the defendant; if, however, his presence is necessary for the purpose of identification, the court may, upon application of the district attorney, by an order or warrant, require the personal attendance of the defendant at the trial. [Amendment approved April 9, 1880; Amendments 1880, p. 19. In effect April 9, 1880.]

CHAPTER VIII.

FORMATION OF THE TRIAL JURY AND THE CALENDAR OF ISSUES FOR TRIAL.

§ 1046. Formation of trial jury.

§ 1047. Clerk to prepare a calendar.

§ 1048. Order of disposing of issues on the calendar.

§ 1049. Defendant entitled to two days to prepare for trial.

§ 1046. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.

Impanelling trial juries: Secs. 246, 247, Code Civ. Proc.

Formation of jury: Secs. 600-604, Code Civ. Proc.

Qualifications and exemptions of jurors: Secs. 198-201, Code Civ. Proc.

§ 1047. The clerk must keep a calendar of all criminal actions pending in the court, enumerating them according to the date of the filing of the indictment or information, specifying opposite the title of each action whether it is for a felony or a misdemeanor, and whether the defendant is in custody or on bail. [Amendment approved April 9, 1880; Amendments 1880, p. 20. In effect April 9, 1880.]

• § 1048. The issues on the calendar must be disposed of in the following order, unless for good cause the court shall direct an action to be tried out of its order:

1. Prosecutions for felony, when the defendant is in custody.

2. Prosecutions for misdemeanor when the defendant is in custody.

3. Prosecutions for felony, when the defendant is on bail.

4. Prosecutions for misdemeanor, when the defendant is on bail. [Amendment approved April 9, 1880; Amendments 1880, p. 20. In effect April 9, 1880.]

§ 1049. After his plea, the defendant is entitled to at least two days to prepare for trial.

CHAPTER IX.

POSTPONEMENT OF THE TRIAL.

§ 1052. Postponement, when, and how ordered.

§ 1052. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause, direct the trial to be postponed to another day. [Amendment approved April 9, 1880; Amendments 1880, p. 20. In effect April 9, 1880.]

The amendment omitted, after the word "day," "of the same or next term."

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TITLE VII.

OF PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

Chapter I. Challenging the Jury, §§ 1055-88.

- II. The Trial, §§ 1093-1131.
- III. Conduct of the Jury after Cause is
Submitted to Them, §§ 1135-43.
- IV. The Verdict, §§ 1147-67.
- V. Bills of Exception, §§ 1170-6.
- VI. New Trial, §§ 1179-82.
- VII. Arrest of Judgment, §§ 1185-8.

CHAPTER I.

CHALLENGING THE JURY.

- § 1055. Definition and division of challenges.
- § 1056. Defendants cannot sever in challenges.
- § 1057. Panel defined.
- § 1058. Challenge to the jury defined.
- § 1059. Upon what founded.
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- § 1061. Exception, if sufficiency of the challenge be de-
fined.
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etc.
- § 1063. Denial of challenge, how made, and trial thereof.
- § 1064. Challenge for bias in summoning officer.
- § 1065. Proceedings, if challenge allowed.
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- § 1067. Kinds of challenges to individual juror.
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- § 1076. Causes of challenge, how stated.
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- § 1078. Challenge, how tried.
- § 1079. Triers, how appointed. Majority may decide. [Repealed.]
- § 1080. Oath of triers. [Repealed.]
- § 1081. Juror challenged may be examined as a witness.
- § 1082. Rules of evidence on trial of challenge.
- § 1083. Decision of court to be entered.
- § 1084. Instructions on trial for actual bias. [Repealed.]
- § 1085. Verdict of triers, and its effect. [Repealed.]
- § 1086. Challenges, first by the defendant.
- § 1087. Order of challenges.
- § 1088. Peremptory challenges, when may be taken.
- § 1089. Alternate jurors.

§ 1055. A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel.
2. To an individual juror.

§ 1056. When several defendants are tried together, they cannot sever their challenges, but must join therein.

§ 1057. The panel is a list of jurors returned by a sheriff to serve at a particular court, or for the trial of a particular action.

Selecting and returning jurors: Code Civ. Proc., secs. 204-211.

Drawing jurors: Code Civ. Proc., secs. 214-220.

Summoning jurors: Code Civ. Proc., secs. 225-228.

§ 1058. A challenge to the panel is an objection made to all the jurors returned, and may be taken by either party.

§ 1059. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury in civil actions, or on the intentional omission of the sheriff to summon one or more of the jurors drawn.

§ 1060. A challenge to the panel must be taken before a juror is sworn, and must be in writing or be noted by the phonographic reporter, and must plainly and distinctly state the facts constituting the ground of challenge.

§ 1061. If the sufficiency of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, or of the phonographic reporter, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Compare with sec. 1077.

Exception to ruling: Sec. 1170.

§ 1062. If, on the exception, the court finds the challenge sufficient, it may, if justice requires it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge. If the exception is allowed, the court may, in like manner, permit an amendment of the challenge.

§ 1063. If the challenge is denied, the denial may be oral, and must be entered on the minutes of the court, or of the phonographic reporter, and the court must proceed to try the question of fact; and upon such trial, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of the challenge.

§ 1064. When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror.

Such challenge must be made in the same form, and determined in the same manner, as if made to a juror.

§ 1065. If, either upon an exception to the challenge or a denial of the facts, the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned. If it is disallowed, the court must direct the jury to be impaneled. [Amendment approved April 9, 1880; Amendments 1880, p. 20. In effect April 9, 1880.]

§ 1066. Before a juror is called, the defendant must be informed by the court, or under its direction, that if he intends to challenge an individual juror he must do so when the juror appears, and before he is sworn.

§ 1067. A challenge to an individual juror is either—

1. Peremptory; or,
2. For cause.

§ 1068. It must be taken when the juror appears, and before he is sworn to try the cause; but the court may for cause permit it to be taken after the juror is sworn, and before the jury is completed.

§ 1069. A peremptory challenge can be taken by either party, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court must exclude him.

§ 1070. If the offense charged be punishable with death, or with imprisonment in the State prison for life, the defendant is entitled to twenty and the State to ten peremptory challenges. On a trial for any other offense, the defendant is entitled to ten and the State to five peremptory challenges. [Amendment approved March 30,

1874; Amendments 1873-4, p. 441. In effect July 1, 1874.]

§ 1071. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either—

1. General—that the juror is disqualified from serving in any case; or,
2. Particular—that he is disqualified from serving in the action on trial.

§ 1072. General causes of challenge are—

1. A conviction for felony.
2. A want of any of the qualifications prescribed by law to render a person a competent juror.
3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of a juror.

Qualifications required of jurors: Code Civ. Proc., sec. 198. See Const., art. 20, sec. 11.

Exemptions: Code Civ. Proc., sec. 200.

§ 1073. Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this Code as implied bias.

2. For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party, which is known in this Code as actual bias. [Amendment approved March 30, 1874; Amendments 1873-4, p. 441. In effect July 1, 1874.]

Implied bias: Sec. 1074.

Actual bias: Sec. 1076.

§ 1074. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment on wages.

3. Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

5. Having served on a trial jury which has tried another person for the offense charged.

6. Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside, or which was discharged without a verdict, after the case was submitted to it.

7. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

8. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror. [Amendment approved April 9, 1880; Amendments 1880, p. 20. In effect April 9, 1880.]

Formed or expressed an unqualified opinion.—Prior to the amendment of section 1074, adopted in 1874, the section included, as an additional ground of challenge for implied bias, the following: "Having formed or expressed an unqualified opinion or belief that the prisoner is guilty or not guilty of the offense charged."

§ 1075. An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

Exemption from jury duty: See Code Civ. Proc., secs. 199, 200.

§ 1076. In a challenge for implied bias, one or more of the causes stated in section one thousand and seventy-four must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of section one thousand and seventy-three must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon public rumor, statements in public journals, or common notoriety; provided it appear to the court, upon his declaration, under oath or otherwise, that he can and will, notwithstanding such an opinion, act impartially and fairly upon the matters to be submitted to him. The challenge may be oral, but must be entered in the minutes of the court or of the phonographic reporter. [Amendment approved March 30, 1874; Amendments 1873-4, p. 443. In effect July 1, 1874.]

§ 1077. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in section one thousand and sixty-one, except that if the exception be allowed, the juror must be excluded. The

adverse party may also orally deny the facts alleged as the ground of challenge.

See *anté*, secs. 1068, 1073, 1076.

Compare with secs. 1061, 1062.

Exceptions to court's ruling: Sec. 1170.

§ 1078. If the facts are denied, the challenge must be tried by the court. [Amendment approved March 30, 1874; Amendments 1873-4, p. 443. In effect July 1, 1874.]

§§ 1079, 1080. [Repealed.]

Sections 1079 and 1080 were repealed by act approved March 30, 1874; Amendments 1873-4, 443. Took effect July 1, 1874.

§ 1081. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry.

§ 1082. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

§ 1083. The court must allow or disallow the challenge, and its decision must be entered in the minutes of the court. [Amendment approved March 30, 1874; Amendments 1873-4, p. 443. In effect July 1, 1874.]

See *ante*, sec. 1076, and *post*, sec. 1170.

§§ 1084, 1085. [Repealed.]

Sections 1084 and 1085 were repealed by act approved March 30, 1874; Amendments 1873-4, 444. Took effect July 1, 1874.

§ 1086. All challenges to an individual juror, except peremptory, must be taken, first by the defendant, and then by the people, and each party must exhaust all his challenges before the other begins.

§ 1087. The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel.
2. To an individual juror, for a general disqualification.
3. To an individual juror, for an implied bias.
4. To an individual juror, for an actual bias.

§ 1088. If all challenges on both sides are disallowed, either party, first the people and then the defendant, may take a peremptory challenge, unless the parties' peremptory challenges are exhausted.

§ 1089. Whenever, in the opinion of a judge of a superior court about to try a defendant against whom has been filed any indictment or information for a felony, the trial is likely to be a protracted one, the court may cause an entry to that effect to be made in the minutes of the court, and thereupon, immediately after the jury is impaneled and sworn, the court may direct the calling of one or two additional jurors, in its discretion, to be known as "alternate jurors." Such jurors must be drawn from the same source, and in the same manner, and have the same qualifications as the jurors already sworn, and be subject to the same examination and challenges; provided, that the prosecution shall be entitled to one, and the defendant to two, peremptory challenges to such alternate jurors.

Such alternate jurors shall be seated near, with

equal power and facilities for seeing and hearing the proceedings in the case, and shall take the same oath as the jurors already selected, and must attend at all times upon the trial of the cause in company with the other jurors; and for a failure so to do are liable to be punished for contempt. They shall obey the orders of and be bound by the admonition of the court upon each adjournment of the court; but if the regular jurors are ordered to be kept in the custody of the sheriff during the trial of the cause, such alternate jurors shall also be kept in confinement with the other jurors; and except, as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If, before the final submission of the case, a juror die, or become ill, so as to be unable to perform his duty, the court may order him to be discharged and draw the name of an alternate, who shall then take his place in the jury-box, and be subject to the same rules and regulations as though he had been selected as one of the original jurors. [New section approved March 28, 1895; Stats. 1895, p. 279. In effect March 28, 1895.]

CHAPTER II.

THE TRIAL.

- § 1093. Order of trial.
- § 1094. When order of trial may be departed from.
- § 1095. Number of counsel who may argue the case.
- § 1096. Defendant presumed innocent. Reasonable doubt.
- § 1097. Reasonable doubt as to degree convicts only of lowest.
- § 1098. Separate trials.
- § 1099. Discharging defendant that he may be a witness.
- § 1100. Same.
- § 1101. Effect of such discharge.
- § 1102. Rules of evidence in civil applicable to criminal cases.
- § 1103. Evidence on trial for treason.
- § 1104. Evidence on trial for conspiracy.
- § 1105. When burden of proof shifts in trials for murder.
- § 1106. Evidence on a trial for bigamy.
- § 1107. Evidence upon a trial for forging bank-bills, etc.
- § 1108. Evidence upon trial for abortion and seduction.
- § 1109. Evidence on a trial for selling, etc., lottery tickets.
- § 1110. Evidence of false pretenses.
- § 1111. Conviction on testimony of accomplice.
- § 1112. Proceedings, if evidence show higher offense than charged. [Repealed.]
- § 1113. Discharge jury for lack of jurisdiction, etc.
- § 1114. Proceedings, if jury discharged for want of jurisdiction of offense committed out of the State.
- § 1115. Proceedings in such case, when offense committed in the State.
- § 1116. Same.
- § 1117. Proceedings, if jury discharged because the facts do not constitute an offense.
- § 1118. When evidence on either side is closed, court may advise jury to acquit.
- § 1119. View of premises, when ordered, and how conducted.
- § 1120. Knowledge of juror to be declared in court, and he to be sworn as a witness.
- § 1121. Jurors, separation of, during trial.
- § 1122. Jury, at each adjournment, must be admonished, etc.
- § 1123. Juror unable to perform his duties, proceedings.
- § 1124. Court to decide questions of law arising during trial.

- § 1125. On indictment for libel, jury to determine law and fact.
- § 1126. In all other cases court to decide questions of law.
- § 1127. Charging the jury.
- § 1128. Jury may decide in court, or retire in custody of officers.
- § 1129. Defendant appearing for trial may be committed.
- § 1130. If district attorney fails to attend, court may appoint.
- § 1131. Allegations of larceny or embezzlement, when sustained.

§ 1093. The jury having been impaneled and sworn, the trial must proceed in the following order, unless otherwise directed by the court:

1. If the indictment or information be for felony, the clerk must read it, and state the plea of the defendant to the jury, and in cases where it charges a previous conviction, and the defendant has confessed the same, the clerk in reading it shall omit therefrom all that relates to such previous conviction. In all other cases this formality may be dispensed with.

2. The district attorney, or other counsel for the people, must open the cause and offer the evidence in support of the charge.

3. The defendant or his counsel may then open the defense, and offer his evidence in support thereof.

4. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.

5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the district attorney, or other counsel for the people, and counsel for the defendant, may argue the case to the court and jury; the district attorney, or other counsel for the people, opening the argument, and having the right to close.

6. The judge may then charge the jury, and must do so on any points pertinent to the issue, if requested by either party; and he may state the testimony and declare the law. If the charge be not given in writing, it must be taken down by the phonographic reporter. [Amendment approved April 9, 1880; Amendments 1880, p. 21. In effect April 9, 1880.]

Number of counsel: Sec. 1095.

§ 1094. When the state of the pleadings requires it, or in any other case, for good reasons, and in the sound discretion of the court, the order prescribed in the last section may be departed from.

§ 1095. If the indictment or information be for an offense punishable with death, two counsel on each side may argue the cause to the jury. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side. [Amendment approved April 9, 1880; Amendments 1880, p. 21. In effect April 9, 1880.]

The order of argument is subject to the discretion of the court: See ante, sec. 1094.

§ 1096. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

Burden of proof, when shifts: See post, sec. 1105.

§ 1097. When it appears that the defendant has committed a public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degrees only.

§ 1098. When two or more defendants are jointly charged with a felony, any defendant requiring it must be tried separately. In other cases the defendants jointly charged may be tried separately or jointly in the discretion of the court. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

§ 1099. When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the district attorney, direct any defendant to be discharged, that he may be a witness for the people. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

See sec. 1101.

§ 1100. When two or more persons are included in the same indictment or information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his codefendant. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

§ 1101. The order mentioned in the last two sections is an acquittal of the defendant discharged, and is a bar to another prosecution for the same offense.

Jeopardy: Sec. 687.

§ 1102. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this Code.

Evidence in civil cases: Code Civ. Proc., pt. 4.
Reporter's notes.—The report of the official re-

porter of any court, duly appointed and sworn, when written out in long-hand, and certified as being a correct transcript of the testimony and proceedings in the case, is *prima facie* a correct statement of such testimony and proceedings: Code Civ. Proc., sec. 273.

Fear excited by threats: See sec. 198, *ante*.

Witnesses.—All persons, except as provided in section 1880 of the Code of Civil Procedure, who have organs of sense, can perceive, and perceiving can make known their perceptions to others, may be witnesses: Code Civ. Proc., sec. 1879.

Cross-examination of.—The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness upon the same matter by the adverse party, the cross-examination: Code Civ. Proc., sec. 2045.

Impeachment of witness.—The party producing a witness is not allowed to impeach his credit by evidence of bad character; but he may contradict him by other evidence, and may also show that he has made at other times statements inconsistent with his present testimony, as provided in section 2052: Code Civ. Proc., sec. 2049.

Discrediting one's own witness: See Code Civ. Proc., sec. 2049.

A witness may be impeached by the party against whom he was called, by contradictory evidence, or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he has been convicted of a felony: Code Civ. Proc., sec. 2051.

A witness may also be impeached by evidence that he has made at other times statements in-

consistent with his present testimony; but before this can be done the statements must be related to him, with the circumstances of time, places, and persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing, they must be shown to the witness before any question is put to him concerning them: Code Civ. Proc., sec. 2052.

Husband or wife as witness: Sec. 1322, note; Code Civ. Proc., sec. 1881, subd. 1.

Act authorizing appointment of interpreter: See post, Appendix, p. 576.

§ 1103. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act, or upon confession in open court; nor can evidence be admitted of an overt act not expressly charged in the indictment or information; nor can the defendant be convicted unless one or more overt acts be expressly alleged therein. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

Treason: Const. U. S., art. 3, sec. 3, subd. 1; Const. Cal., art. 1, sec. 20; Code Civ. Proc., sec. 1968.

§ 1104. Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

§ 1105. Upon a trial for murder, the commission of the homicide by the defendant being prov-

ed, the burden of proving circumstances of mitigation, or that justify or excuse it, devolves upon him, unless the proof on the part of the prosecution tends to show that the crime committed only amounts to manslaughter, or that the defendant was justifiable or excusable.

Stats. 1850, 229, sec. 37.

§ 1106. Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate, or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases; and when the second marriage took place out of this State, proof of that fact, accompanied with proof of cohabitation thereafter in this State, is sufficient to sustain the charge.

Stats. 1861, 415, sec. 1.

Bigamy defined: Sec. 281, ante.

§ 1107. Upon a trial for forging any bill or note purporting to be the bill or note of an incorporated company or bank, or for passing, or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation; and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

Stats. 1850, 229, sec. 79.

Forgery and counterfeiting: See ante, sec. 470.

§ 1108. Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, or for inveigling, enticing, or taking away an unmarried female of previous chaste character, under the age of twenty-five years, for

the purpose of prostitution, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the woman upon or with whom the offense was committed, unless she is corroborated by other evidence.

§ 1109. Upon a trial for the violation of any of the provisions of chapter nine, title nine, part one of this Code, it is not necessary to prove the existence of any lottery in which any lottery ticket purports to have been issued, or to prove the actual signing of any such ticket or share, or pretended ticket or share, of any pretended lottery, nor that any lottery ticket, share, or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases proof of the sale, furnishing, bartering, or procuring of any ticket, share, or interest therein, or of any instrument purporting to be a ticket, or part or share of any such ticket, is evidence that such share or interest was signed and issued according to the purport thereof.

For chapter 9, title 9, part 1, above referred to, see ante, sec. 319; Stats. 1861, 229, sec. 12.

§ 1110. Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof, be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corrob-

orating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

Stats. 1862, 53, sec. 1.

§ 1111. A conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, if it merely shows the commission of the offense, or the circumstances thereof.

§ 1112. [Repealed. In effect March 12, 1880.]

Section 1112, relating to cases where the evidence showed a higher offense than the one charged, was repealed by act of March 12, 1880; Amendments 1880, 6. Took effect from passage.

§ 1113. The court may direct the jury to be discharged, where it appears that it has not jurisdiction of the offense, or that the facts charged do not constitute an offense punishable by law. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

Jurisdiction generally: See secs. 777, 794.

§ 1114. If the jury be discharged because the court has not jurisdiction of the offense charged, and it appear that it was committed out of the jurisdiction of this State, the defendant must be discharged. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

Crime committed out of the state: Sec. 27, subd. 3.

Jurisdiction: See secs. 777, 794.

§ 1115. If the offense was committed within the exclusive jurisdiction of another county of this State, the court must direct the defendant to be committed for such time as it deems reasonable, to await a warrant from the proper county for his arrest; or if the offense is a misdemeanor only, it may admit him to bail in an undertaking, with sufficient sureties, that he will, within such time as the court may appoint, render himself amenable to a warrant for his arrest from the proper county; and, if not sooner arrested thereon, will attend at the office of the sheriff of the county where the trial was had, at a certain time particularly specified in the undertaking, to surrender himself upon the warrant, if issued, or that his bail will forfeit such sum as the court may fix, to be mentioned in the undertaking; and the clerk must forthwith transmit a certified copy of the indictment or information, and of all the papers filed in the action, to the district attorney of the proper county, the expense of which transmission is chargeable to that county. [Amendment approved April 9, 1880; Amendments 1880, p. 22. In effect April 9, 1880.]

§ 1116. If the defendant is not arrested on a warrant from the proper county, as provided in section one thousand one hundred and fifteen, he must be discharged from custody, or his bail in the action is exonerated, or money deposited instead of bail must be refunded, as the case may be, and the sureties in the undertaking, as mentioned in that section, must be discharged. If he is arrested, the same proceedings must be had thereon as upon the arrest of a defendant in another county on a warrant of arrest issued by a magistrate.

§ 1117. If the jury is discharged because the facts as charged do not constitute an offense pun-

ishable by law, the court must order that the defendant, if in custody, be discharged; or if admitted to bail, that his bail be exonerated; or if he has deposited money instead of bail, that the money be refunded to him, unless in its opinion a new indictment or information can be framed, upon which the defendant can be legally convicted, in which case it may direct the district attorney to file a new information, or (if the defendant has not been committed by a magistrate) direct that the case be submitted to the same or another grand jury; and the same proceedings must be had thereon as are prescribed in section nine hundred and ninety-eight; provided, that after such order or submission the defendant may be examined before a magistrate, and discharged or committed by him as in other cases. [Amendment approved April 9, 1880; Amendments 1880, p. 23. In effect April 9, 1880.]

§ 1118. If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury are not bound by the advice.

§ 1119. When, in the opinion of the court, it is proper that the jury should view the place in which the offense is charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of the sheriff, to the place, which must be shown to them by a person appointed by the court for that purpose; and the sheriff must be sworn to suffer no person to speak or communicate with the jury, nor to do so himself, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

§ 1120. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

§ 1121. The jurors sworn to try an action may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof. [Amendment approved April 9, 1880; Amendments 1880, p. 23. In effect April 9, 1880.]

§ 1122. The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves, or with any one else, on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

§ 1123. If, before the conclusion of the trial, a juror becomes sick so as to be unable to perform his duty, the court may order him to be discharged. In that case, a new juror may be sworn, and the trial begun anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

§ 1124. The court must decide all questions of law which arise in the course of a trial.

Court to decide questions of laws, as, the admissibility of evidence, post, sec. 1127.

§ 1125. On a trial for libel, the jury has the right to determine the law and the fact. [Amendment approved April 9, 1880; Amendments 1880, p. 23. In effect April 9, 1880.]

Same principle: Art. 1, sec. 9, of the constitution.

§ 1126. On a trial for any other offense than libel, questions of law are to be decided by the court, questions of fact by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court. [Amendment approved April 9, 1880; Amendments 1880, p. 23. In effect April 9, 1880.]

In libel: See Const. Cal., art. 1, sec. 9. See sec. 1102.

§ 1127. In charging the jury the court must state to them all matters of law necessary for their information. All instructions given (except such as might incidentally be given during the admission of evidence) shall be in writing, unless both parties request the giving of an oral instruction, or consent thereto, and when so given orally, all instructions must be taken down by the phonographic reporter. Either party may present to the court any written charge, and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused, the court must indorse and sign its decision. If part be given and part refused, the

court must distinguish, showing by the indorsement what part of the charge was given and what part refused. [Amendment approved March 27, 1897; Stats. 1897, ch. 123.]

Instructions: See also secs. 1093, 1102.

Charging jurors upon questions of fact: Sec. 1094, subd. 6.

Oral instructions: Sec. 1094, subd. 6; sec. 1176.

Instructions upon insanity: Sec. 26, subd. 3.

Presumption of innocence: Sec. 1096.

§ 1128. After hearing the charge, the jury may either decide in court or may retire for deliberation. If they do not agree without retiring, an officer must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor to do so himself, unless by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

Oath of officer in charge of jury: Sec. 1440.

§ 1129. When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

§ 1130. If the district attorney fails to attend at the trial, the court must appoint some attorney-at-law to perform the duties of the district attorney on such trial.

District attorney, duties of: Pol. Code, secs. 4256-4258.

Argument: Sec. 1093, subd. 5.

Number of counsel: Sec. 1095.

Penal Code—31.

Order of argument: Sec. 1095.

§ 1131. Upon a trial for larceny or embezzlement of money, bank-notes, certificates of stock, or valuable securities, the allegation of the indictment or information, so far as regards the description of the property, is sustained, if the offender be proved to have embezzled or stolen any money, bank-notes, certificates of stock, or valuable security, although the particular species of coin or other money, or the number, denomination, or kind of bank-notes, certificates of stock, or valuable security, be not proved; and upon a trial for embezzlement, if the offender be proved to have embezzled any piece of coin or other money, any bank-note, certificate of stock, or valuable security, although such piece of coin or other money, or such bank-note, certificate of stock, or valuable security, may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly. [Amendment approved April 9, 1880; Amendments 1880, p. 23. In effect April 9, 1880.]

CHAPTER III.

CONDUCT OF THE JURY AFTER THE CAUSE IS SUBMITTED TO THEM.

- § 1135. Room, etc., for jury after retirement.
- § 1136. Accommodations for jury when kept together.
- § 1137. What papers the jury may take with them.
- § 1138. After retirement, may return into court for information.
- § 1139. If juror after retirement becomes sick, etc.
- § 1140. Not to be discharged unless there is no probability that they can agree.
- § 1141. When discharged without verdict, cause to be again tried.
- § 1142. Court may adjourn during absence, but deemed open.
- § 1143. Final adjournment discharges jury. [Repealed.]

§ 1135. A room must be provided by the supervisors of each county for the use of the jury, upon their retirement for deliberation, with suitable furniture, fuel, lights, and stationery. If the supervisors neglect, the court may order the sheriff to do so, and the expenses incurred by him in carrying the order into effect, when certified by the court, are a county charge.

Jury expenses: See Pol. Code, sec. 4344, subd. 3.

§ 1136. While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they must be provided by the sheriff, at the expense of the county, with suitable and sufficient food and lodging.

§ 1137. Upon retiring for deliberation, the jury may take with them all papers (except depositions) which have been received as evidence in the cause, or copies of such public records or pri-

vate documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them the written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves, or any of them, but none taken by any other person.

§ 1138. After the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the district attorney and the defendant or his counsel, or after they have been called. [Amendment approved March 30, 1874; Amendments 1873-4, p. 445. In effect July 1, 1874.]

§ 1139. If, after the retirement of the jury, one of them be taken so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept for deliberation, the jury may be discharged.

Discharge of jury: See ante, sec. 1017, subd. 4.

§ 1140. Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by consent of both parties, entered upon the minutes, or unless at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

§ 1141. In all cases where a jury is discharged or prevented from giving a verdict by reason

of an accident or other cause, except where the defendant is discharged during the progress of the trial, or after the cause is submitted to them, the cause may be again tried. [Amendment approved April 9, 1880; Amendments 1880, p. 24. In effect April 9, 1880.]

See post, sec. 1181.

Jeopardy: Sec. 687.

§ 1142. While the jury are absent, the court may adjourn from time to time, as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged.

§ 1143. [Repealed. In effect March 12th, 1880.]

Section 1143, relating to the discharge of the jury by the final adjournment of the court, was repealed by act of March 12, 1880; Amendments 1880, 6 (Ban. ed. 27); took effect from passage.

CHAPTER IV.

THE VERDICT.

- § 1147. Return of jury.
- § 1148. Appearance of defendant.
- § 1149. Manner of taking verdict.
- § 1150. Verdict may be general or special.
- § 1151. General verdict.
- § 1152. Special verdict.
- § 1153. Special verdict, how rendered.
- § 1154. Form of special verdict.
- § 1155. Judgment on special verdict.
- § 1156. When special verdict defective, new trial to be ordered.
- § 1157. Jury to find degree of crime.
- § 1158. Jury may find upon charge of previous conviction.
- § 1159. Jury may convict of lesser offense, or of attempt.
- § 1160. Verdict as to some defendants, new trial as to others.
- § 1161. Court may direct a reconsideration of the verdict.
- § 1162. When judgment may be given on informal verdict.
- § 1163. Polling the jury.
- § 1164. Recording the verdict.
- § 1165. Defendant, when to be discharged.
- § 1166. Proceedings upon conviction or special verdict.
- § 1167. Proceedings on acquittal on ground of insanity.

§ 1147. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the action may be again tried at the same or another term.

§ 1148. If charged with a felony, the defendant must, before the verdict is received, appear in person. If for a misdemeanor, the verdict may be rendered in his absence. [Amendment approved April 9, 1880; Amendments 1880, 24. In effect April 9th, 1880.]

Judgment in defendant's presence: See sec. 1193.

§ 1149. When the jury appear, they must be asked by the court, or clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

§ 1150. The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, except upon a trial for libel, find a special verdict. [Amendment approved April 9, 1880; Amendments 1880, 24. In effect April 9th, 1880.]

§ 1151. A general verdict upon a plea of not guilty is either "guilty" or "not guilty," which imports a conviction or acquittal of the offense charged in the indictment. Upon a plea of a former conviction or acquittal of the same offense, it is either "for the people" or "for the defendant." When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity." When the defendant is acquitted on the ground of variance between the indictment and the proof, the verdict must be "not guilty by reason of variance between indictment and proof." [Amendment approved March 30th, 1874; Amendments 1873-4, 446. In effect July 1, 1874.]

§ 1152. A special verdict is that by which the jury find the facts only, leaving the judgment to the court. It must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them.

§ 1153. The special verdict must be reduced to writing by the jury, or in their presence entered

upon the minutes of the court, read to the jury, and agreed to by them, before they are discharged.

Verdict, how rendered.—If the jury is discharged before the verdict is entered, the prisoner ought to be discharged: See ante, sec. 1151; and post, sec. 1181.

§ 1154. The special verdict need not be in any particular form, but is sufficient if it present intelligibly the facts found by the jury.

§ 1155. The court must give judgment upon the special verdict as follows:

1. If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment, or of any other offense of which he could be convicted under that indictment, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given.

2. If the plea is a former conviction or acquittal of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal.

See post, sec. 1159; ante, sec. 1016, subd. 3.

§ 1156. If the jury do not, in a special verdict, pronounce affirmatively or negatively on the facts necessary to enable the court to give judgment, or if they find the evidence of facts merely, and not the conclusions of fact, from the evidence, as established to their satisfaction, the court must order a new trial.

See New Trial, post, sec. 1181.

§ 1157. Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

§ 1158. Whenever the fact of a previous conviction of another offense is charged in an indict-

ment or information, the jury, if they find a verdict of guilty of the offense with which he is charged, must also, unless the answer of the defendant admits the charge, find whether or not he has suffered such previous conviction. The verdict of the jury upon a charge of previous conviction may be: "We find the charge of previous conviction true," or, "We find the charge of previous conviction not true," as they find that the defendant has or has not suffered such conviction. [Amendment approved April 9, 1880; Amendments 1880, 24. In effect April 9, 1880.]

See ante, secs. 1155, 1157.

§ 1159. The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense. [Amendment approved April 9, 1880; Amendments 1880, 24. In effect April 9th, 1880.]

Lesser offense: See ante, secs. 1155, 1157.

§ 1160. On an indictment or information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the others may be tried by another jury. [Amendment approved April 9, 1880; Amendments 1880, 24. In effect April 9, 1880.]

§ 1161. When there is a verdict of conviction, in which it appears to the court that the jury have mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered; but when there is a verdict of acquittal, the court cannot require the jury to reconsider it. If

the jury render a verdict which is neither general nor special, the court may direct them to reconsider it, and it cannot be recorded until it is rendered in some form from which it can be clearly understood that the intent of the jury is either to render a general verdict or to find the facts specially, and to leave the judgment to the court.

§ 1162. If the jury persist in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant upon the issue, or judgment is given against him on a special verdict.

§ 1163. When a verdict is rendered, and before it is recorded, the jury may be polled, at the request of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

§ 1164. When the verdict given is such as the court may receive, the clerk must immediately record it in full upon the minutes, read it to the jury, and inquire of them whether it is their verdict. If any juror disagree, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

See Jeopardy, ante, sec. 1016.

§ 1165. If judgment of acquittal is given on a general verdict, and the defendant is not detained

for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof, which may be obviated by a new indictment or information, the court may order his detention, to the end that a new indictment or information may be preferred, in the same manner and with like effect as provided in section one thousand one hundred and seventeen. [Amendment approved April 9, 1880; Amendments 1880, p. 25. In effect April 9, 1880.]

Jeopardy: Sec. 687.

§ 1166. If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail, he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed, his bail is exonerated, or if money is deposited instead of bail, it must be refunded to the defendant.

Stats. 1851, 212.

See Bail, post, sec. 1268.

§ 1167. If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the State insane asylum. If the jury find the defendant sane, he shall be discharged.

[Amendment approved March 30, 1874; Amendments 1873-4, p. 446. In effect July 1, 1874.]

Inquiry into insanity of defendant before trial or after conviction: Secs. 1367 et seq.

CHAPTER V.

BILLS OF EXCEPTION.

§ 1170. In what cases.

§ 1171. When to be settled and signed.

§ 1172. Exceptions to decision of court by either party.

§ 1173. Exceptions to decision of the court by the defendant.

§ 1174. Exceptions, how settled.

§ 1175. What bill of exceptions is to contain.

§ 1176. Written charges need not be excepted to.

§ 1170. On the trial of an indictment or information, exceptions may be taken by the defendant to a decision of the court—

1. In disallowing a challenge to the panel of the jury, or to an individual juror for implied bias.

2. In admitting or rejecting testimony on the trial of a challenge to a juror for actual bias.

3. In admitting or rejecting testimony, or in deciding any question of law not a matter of discretion, or in charging or instructing the jury upon the law on the trial of the issue. [Amendment approved April 9, 1880; Amendments 1880, p. 25. In effect April 9, 1880.]

Subd. 1. Exceptions may be taken: See ante, secs. 1055-1058.

Subd. 2. A bill of exceptions may be maintained: See ante, secs. 1073, 1078, 1102.

Subd. 3. When a general objection is made to evidence: See ante, sec. 1102.

Challenge for actual bias: Sec. 1076.

Oral instructions: Sec. 1093, subd. 6.

§ 1171. When a party desires to have the exceptions taken at the trial settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days to the district attorney, to the judge for settlement, within ten days after judgment has been rendered against him, unless further time is granted by the judge, or by a justice of the Supreme Court, or within that period the draft must be delivered to the clerk of the court for the judge. When received by the clerk, he must deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge and filed with the clerk of the court. [Amendment approved February 18, 1881; Stats. 1881, p. 6.]

§ 1172. Exceptions may be taken by either party to the decision of a court or judge upon a matter of law:

1. In granting or refusing a motion to set aside an indictment or information.
2. In allowing or disallowing a demurrer to an indictment or information.
3. In granting or refusing a motion in arrest of judgment.
4. In granting or refusing a motion for a new trial.
5. In making, or refusing to make, an order after judgment affecting any substantial right of the parties. [Amendment approved March 10, 1885; Stats. 1885, p. 58.]

See post, secs. 1185-1188.

Subd. 3: See post, sec. 1237, subd. 3.

New trial: See post, secs. 1179-1182.

Bill of exceptions: Sec. 1171.

Bill of exceptions, contents of: Sec. 1171.

Bill of exceptions, settlement of: Sec. 1171.

§ 1173. Exceptions may be taken by the defendant to a decision of the court upon a matter of law—

1. In refusing to grant a motion for a change of the place of trial.
2. In refusing to postpone the trial on motion of the defendant.

§ 1174. Where a party desires to have the exceptions mentioned in the last two sections settled in a bill of exceptions, the draft of a bill must be prepared by him and presented, upon notice of at least two days to the adverse party, to the judge, for settlement, within ten days after the order or ruling complained of is made, unless further time is granted by the judge, or by a justice of the Supreme Court, or within that period the draft must be delivered to the clerk of the court for the judge. When received by the clerk, he must deliver it to the judge, or transmit it to him at the earliest period practicable. When settled, the bill must be signed by the judge, and filed with the clerk of the court. If the judge in any case refuses to allow an exception in accordance with the facts, the party desiring the bill settled may apply by petition to the Supreme Court to prove the same, the application may be made in the mode and manner, and under such regulations as that court may prescribe; and the bill, when proven, must be certified by the chief justice as correct, and filed with the clerk of the court in which the action was tried, and when so filed, it has the same force and effect as if settled by the judge who tried the cause. If the judge who presided at the trial ceases to hold office before the bill is tendered or settled, he may nevertheless settle such bill, or the party may, as provided in this section, apply to the Supreme Court to prove the same. [Amendment approved March 30, 1874;

Amendments 1873-4, p. 448. In effect July 1, 1874.]

§ 1175. A bill of exceptions must contain so much of the evidence only as is necessary to present the questions of law upon which the exceptions were taken; and the judge must upon the settlement of the bill, whether agreed to by the parties or not, strike out all other matters contained therein.

§ 1176. When written charges have been presented, given, or refused, or when the charges have been taken down by the reporter, the questions presented in such charges need not be excepted to or embodied in a bill of exceptions, but the written charges of the report, with the indorsements showing the action of the court, form part of the record, and any error in the decision of the court thereon may be taken advantage of on appeal, in like manner as if presented in a bill of exceptions.

By section 1207, subdivision 3, post, all charges given or refused, and the indorsements thereon, constitute a part of the judgment roll or record of the action.

CHAPTER VI.

NEW TRIALS.

§ 1179. New trial defined.

§ 1180. Its effect.

§ 1181. In what cases it may be granted.

§ 1182. Application for, when made.

§ 1179. A new trial is a re-examination of the issue in the same court, before another jury, after a verdict has been given.

§ 1180. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew, and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the indictment. [Amendment approved March 30, 1874; Amendments 1873-4, p. 449. In effect July 1, 1874.]

§ 1181. When a verdict has been rendered against the defendant, the court may, upon his application, grant a new trial, in the following cases only:

1. When the trial has been had in his absence, if the indictment is for a felony.

2. When the jury has received any evidence out of court other than that resulting from a view of the premises.

3. When the jury has separated without leave of the court, after retiring to deliberate upon their verdict, or been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly-discovered evidence, the defendant must produce at the hearing

in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as, under all the circumstances of the case, may seem reasonable.

§ 1182. The application for a new trial must be made before judgment.

CHAPTER VII.

ARREST OF JUDGMENT.

§ 1185. Motion in arrest of judgment.

§ 1186. Court may arrest judgment without motion.

§ 1187. Effect of arresting judgment.

§ 1188. Defendant, when to be held or discharged.

§ 1185. A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant, on a plea of a former conviction or acquittal. It may be founded on any of the defects in the indictment or information mentioned in section one thousand and four, unless the objection has been waived by a failure to demur, and must be made before or at the time the defendant is called for judgment. [Amendment approved April 9, 1880; Amendments 1880, p. 25. In effect April 9, 1880.]

Indictment, sufficiency of: See ante, sec. 960.

Grounds of demurrer: See ante, sec. 1004.

§ 1186. The court may also, on its own view of any of these defects, arrest the judgment without motion.

§ 1187. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found or information filed. [Amendment approved April 9, 1880; Amendments 1880, p. 25. In effect April 9, 1880.]

§ 1188. If, from the evidence on the trial, there is reason to believe the defendant guilty, and a new indictment or information can be framed upon which he may be convicted, the court may order him to be recommitted to the officer of the proper county, or admitted to bail anew, to answer the new indictment or information. If the evidence shows him guilty of another offense, he must be committed or held thereon, and in neither case shall the verdict be a bar to another prosecution. But if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged; or if admitted to bail, his bail is exonerated; or if money has been deposited instead of bail, it must be refunded to the defendant; and the arrest of judgment shall operate as an acquittal of the charge upon which the indictment or information was founded. [Amendment approved April 9, 1880; Amendments 1880, p. 25. In effect April 9, 1880.]

Discharge of defendant: See post, sec. 1485.

TITLE VIII.

OF JUDGMENT AND EXECUTION.

Chap. I. The Judgment, §§ 1191-1207.

II. The Execution, §§ 1213-1230.

CHAPTER I.

THE JUDGMENT.

- § 1191. Appointing time for judgment.
- § 1192. Upon plea of guilty, court must determine degree.
- § 1193. Presence of defendant.
- § 1194. Defendant in custody, how brought for judgment.
- § 1195. How brought before the court when on bail.
- § 1196. Bench-warrant to issue.
- § 1197. Form of bench-warrant.
- § 1198. Warrant, how served.
- § 1199. Arrest of defendant.
- § 1200. Arraignment of defendant for judgment.
- § 1201. What cause may be shown against the judgment.
- § 1202. If no cause shown, judgment to be pronounced.
- § 1203. Circumstances in aggravation or mitigation of punishment.
- § 1204. Proof of former conviction, etc., in mitigation, how made.
- § 1205. Duration of imprisonment on judgment to pay a fine.
- § 1206. Judgment to pay a fine constitutes a lien.
- § 1207. Entry of judgment and judgment roll.

§ 1191. After a plea or verdict of guilty, or after a verdict against the defendant on the plea of a former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment, which, in cases of felony, must be at least two days after the verdict, if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed.

[Amendment approved March 30, 1874; Amendments 1873-4, p. 449. In effect July 1, 1874.]

§ 1192. Upon a plea of guilty of a crime distinguished or divided into degrees, the court must, before passing sentence, determine the degree.

§ 1193. For the purpose of judgment, if the conviction is for felony, the defendant must be personally present; if for a misdemeanor, judgment may be pronounced in his absence.

Verdict in defendant's presence: Sec. 1148.

§ 1194. When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so.

§ 1195. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money deposited, may direct the clerk to issue a bench warrant for his arrest.

§ 1196. The clerk, on the application of the district attorney, may, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

§ 1197. The bench warrant must be substantially in the following form: "County of _____. The People of the State of California, to any sheriff, constable, marshal, or policeman in this State: A. B., having been on the ____ day of _____ A. D. eighteen hundred and _____, duly convicted in the Superior Court of the County of _____, of the crime of _____ (designating it generally), you are therefore commanded forthwith to arrest the

above named A. B., and bring him before that court for judgment. Given under my hand with the seal of said court affixed, this — day of —, A. D. eighteen hundred and —. By order of the Court. [Seal.] E. F., Clerk." [Amendment approved April 12, 1880; Stats. 1880, p. 34. In effect April 12, 1880.]

§ 1198. The bench warrant may be served in any county in the same manner as a warrant of arrest, except that when served in another county it need not be indorsed by the magistrate of that county.

§ 1199. Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

§ 1200. When the defendant appears for judgment, he must be informed by the court, or by the clerk, under its direction, of the nature of the charge against him, and of his plea, and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him. [Amendment approved April 9, 1880; Amendments 1880, p. 26. In effect April 9, 1880.]

§ 1201. He may show, for cause against the judgment:

1. That he is insane; and if, in the opinion of the court, there is reasonable ground for believing him to be insane, the question of insanity must be tried as provided in chapter six, title ten, part two of this Code. If, upon the trial of that question, the jury find that he is sane, judgment must be pronounced, but if they find him insane, he

must be committed to the State lunatic asylum until he becomes sane; and when notice is given of that fact, as provided in section one thousand three hundred and seventy-two, he must be brought before the court for judgment.

2. That he has good cause to offer, either in arrest of judgment or for a new trial; in which case the court may, in its discretion, order the judgment to be deferred, and proceed to decide upon a motion in arrest of judgment or for a new trial.

Punishment of person while insane: Sec. 1367.

§ 1202. If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered.

Judgment, rendition of.—After a plea or verdict of guilty, the court must appoint a time for pronouncing judgment, as provided in section 1191.

§ 1203. After a plea or verdict of guilty, where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the oral suggestion of either party that there are circumstances which may be properly taken into view either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily, at a specified time, and upon such notice to the adverse party as it may direct.

§ 1204. The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken by a magistrate of the county, out of court, upon such notice to the adverse party as the court may direct. No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court, or a judge thereof, in aggravation or mitigation of the

punishment, except as provided in this and the preceding section.

§ 1205. A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied. But the judgment must specify the extent of the imprisonment, which must not exceed one day for every two dollars of the fine, nor extend in any case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. [Amendment approved March 10, 1891; Stats. 1891, p. 52.]

§ 1206. A judgment that the defendant pay a fine constitutes a lien, in like manner as a judgment for money rendered in a civil action.

See post, sec. 1570. Compare with sec. 1214.

§ 1207. When judgment upon a conviction is rendered, the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of a prior conviction, (if one) and must, within five days, annex together and file the following papers, which will constitute a record of the action:

1. The indictment or information, and a copy of the minutes of the plea or demurrer.
2. A copy of the minutes of the trial.
3. The charges given or refused, and the indorsements thereon. And,
4. A copy of the judgment. [Amendment approved April 9, 1880; Amendments 1880, p. 26. In effect April 9, 1880.]

CHAPTER II.

THE EXECUTION.

- § 1213. Execution of a judgment other than of death.
- § 1214. If for fine alone, execution to issue as in civil cases.
- § 1215. Judgment of fine and imprisonment, how executed.
- § 1216. Judgment of imprisonment. Duty of sheriff.
- § 1217. Execution upon judgment of death.
- § 1218. Transmission of conviction and testimony to governor.
- § 1219. Governor may require opinion of Supreme Court thereon.
- § 1220. Judgment of death, when suspended.
- § 1221. Insanity of defendant, how determined.
- § 1222. Duty of district attorney upon inquisition.
- § 1223. Inquisition, how certified and filed.
- § 1224. Proceedings upon finding of jury.
- § 1225. Proceedings when female is supposed to be pregnant.
- § 1226. Proceedings upon the finding of the jury.
- § 1227. Judgment of death remaining in force, not executed.
- § 1228. Punishment of death, how inflicted.
- § 1229. Execution, where to take place and who to be present.
- § 1230. Return upon death-warrant.

§ 1213. When a judgment, other than of death, has been pronounced, a certified copy of the entry thereof upon the minutes must be forthwith furnished to the officer whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

§ 1214. If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action.

Stats. 1851, 212. See ante, secs. 1206, 1209.

§ 1215. If the judgment is for imprisonment, or a fine, and imprisonment until it be paid, the defendant must forthwith be committed to the custody of the proper officer, and by him detained until the judgment is complied with.

Payment of fine: Sec. 1205.

§ 1216. If the judgment is for imprisonment in the State prison, the sheriff of the county must, upon receipt of a certified copy thereof, take and deliver the defendant to the warden of the State prison. He must also deliver to the warden the certified copy of the judgment, and take from the warden a receipt for the defendant.

Execution: Sec. 1213.

§ 1217. When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk, under the seal of the court, must be drawn and delivered to the sheriff. It must state the conviction and judgment, and appoint a day on which the judgment is to be executed, which must not be less than sixty nor more than ninety days from the time of judgment, and must direct the sheriff to deliver the defendant, within ten days from the time of judgment, to the warden of one of the state prisons of this State, for execution, such prison to be designated in the warrant. [Amendment approved March 31, 1891; Stats. 1891, p. 272.]

§ 1218. The judge of the court of which a conviction requiring judgment of death is had, must, immediately after the conviction, transmit to the governor, by mail or otherwise, a statement of the conviction and judgment, and of the testimony given at the trial.

§ 1219. The governor may thereupon require the opinion of the justices of the Supreme Court

and of the attorney-general, or any of them, upon the statement so furnished.

§ 1220. No judge, court, or officer, other than the governor, can suspend the execution of a judgment of death, except the warden of the State prison to whom he is delivered for execution, as provided in the six succeeding sections, unless an appeal is taken. [Amendment approved March 31, 1891; Stats. 1891, p. 273.]

§ 1221. If, after judgment of death, there is good reason to suppose that the defendant has become insane, the warden of the state prison to whom he is delivered for execution, with the concurrence of the judge of the Superior Court of the county in which such prison is situated, may summon from the list of jurors selected by the supervisors for the year, a jury of twelve persons, to inquire into the supposed insanity, and must give immediate notice thereof to the district attorney of such county. [Amendment approved March 31, 1891; Stats. 1891, p. 273.]

§ 1222. The district attorney must attend the inquisition, and may produce witnesses before the jury, for which purpose he may issue process in the same manner as for witnesses to attend before the grand jury, and disobedience thereto may be punished in like manner as disobedience to process issued by the court.

§ 1223. A certificate of the inquisition must be signed by the jurors and the warden, and filed with the clerk of the Superior Court of the county in which such state prison is situated. [Amendment approved March 31, 1891; Stats. 1891, p. 273.]

§ 1224. If it is found by the inquisition that the defendant is sane, the warden must execute

the judgment but if it is found that he is insane, the warden must suspend the execution of the judgment until he receives a warrant from the governor, or from the judge of the Superior Court of the county in which such state prison is situated, directing the execution of the judgment. If the inquisition finds that the defendant is insane, the warden must immediately transmit it to the governor, who may, when the defendant becomes sane, issue a warrant appointing a day for the execution of the judgment. [Amendment approved March 31, 1891; Stats. 1891, p. 273.]

§ 1225. If there is good reason to suppose that a female against whom a judgment of death is rendered is pregnant, the warden of the state prison to whom she is delivered for execution, with the concurrence of the Superior Court of the county in which such state prison is situated, may summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice thereof must be given to the district attorney of such county, and the provisions of sections twelve hundred and twenty-two and twelve hundred and twenty-three apply to the proceedings upon the inquisition. [Amendment approved March 31, 1891; Stats. 1891, p. 273.]

§ 1226. If it is found by the inquisition that the female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant, the warden must suspend the execution of the judgment, and transmit the inquisition to the governor. When the governor is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment. [Amendment approved March 31, 1891; Stats. 1891, p. 274.]

§ 1227. If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction is had, on the application of the district attorney of the county in which the conviction is had, must order the defendant to be brought before it, or if he is at large, a warrant for apprehension may be issued. Upon the defendant being brought before the court, it must inquire into the facts, and if no legal reasons exist against the execution of the judgment, must make an order that the warden of the state prison to whom the sheriff is directed to deliver the defendant shall execute the judgment at a specified time. The warden must execute the judgment accordingly. [Amendment approved March 31, 1891; Stats. 1891, p. 274.]

§ 1228. The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

Warrant of execution: Sec. 1217.

§ 1229. A judgment of death must be executed within the walls of one of the state prisons designated by the court by which judgment is rendered. The warden of the state prison where the execution is to take place must be present at the execution, and must invite the presence of a physician, the attorney-general of the State, and at least twelve reputable citizens, to be selected by him; and he shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name, and any persons, relatives, or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. But no other persons than those mentioned in this section can be present at the execution, nor can any person under age be

allowed to witness the same. [Amendment approved March 31, 1891; Stats. 1891, p. 274.]

Founded upon the act to abolish public executions: Stats. 1858, 192, sec. 1.

§ 1230. After the execution, the warrant must make a return upon the death warrant to the court by which the judgment was rendered, showing the time, mode, and manner in which it was executed. [Amendment approved March 31, 1891; Stats. 1891, p. 274.]

Stats. 1858, 192, sec. 3.

TITLE IX.

OF APPEALS TO THE SUPREME COURT.

- Chap. I. Appeals, when allowed and how taken,
and the Effect thereof, §§ 1235-46.
II. Dismissing an Appeal for Irregularity,
§§ 1248-9.
III. Argument of the Appeal, §§ 1252-5.
IV. Judgment upon Appeal, §§ 1258-65.

CHAPTER I.

APPEALS, WHEN ALLOWED AND HOW TAKEN, AND
THE EFFECT THEREOF.

- § 1235. Appeal, by whom taken, on questions of law alone.
§ 1236. Parties, how designated on appeal.
§ 1237. Appeal, when may be taken by the defendant.
§ 1238. In what cases by the people.
§ 1239. Appeals, within what time to be taken.
§ 1240. Appeal, how taken.
§ 1241. When notice may be served by publication.
§ 1242. Effect of an appeal by the people.
§ 1243. Effect of an appeal by the defendant.
§ 1244. Same.
§ 1245. Same.
§ 1246. Duty of clerks upon appeal.

§ 1235. Either party in a criminal action amounting to a felony, may appeal to the Supreme Court, on questions of law alone, as prescribed in this chapter.

Under the present constitution the appellate jurisdiction of the Supreme Court in criminal cases extends to "all criminal cases prosecuted by indictment or information in a court of record": Const. Cal., 1879, art. 6, sec. 4.

§ 1236. The party appealing is known as the appellant, and the adverse party as the respondent, but the title of the action is not changed in consequence of the appeal.

§ 1237. An appeal may be taken by the defendant:

1. From a final judgment of conviction.
2. From an order denying a motion for a new trial.
3. From an order made after judgment, affecting the substantial rights of the party.

§ 1238. An appeal may be taken by the people:

1. From an order setting aside the indictment or information;
2. From a judgment for the defendant on a demurrer to the indictment or information;
3. From an order granting a new trial;
4. From an order arresting judgment;
5. From an order made after judgment, affecting the substantial rights of the people;
6. From an order of the court directing the jury to find for the defendant. [Amendment approved March 27, 1897; Stats. 1897, ch. 135. In effect immediately.]

Jeopardy, ante, sec. 1016.

§ 1239. An appeal from a judgment must be taken within one year after its rendition, and from an order, within sixty days after it is made.

§ 1240. An appeal is taken by filing with the clerk of the court in which the judgment or order appealed from is entered or filed, a notice stating the appeal from the same, and serving a copy thereof upon the attorney of the adverse party.

§ 1241. If personal service of the notice cannot be made, the judge of the court in which the

action was tried, upon proof thereof, may make an order for the publication of the notice in some newspaper, for a period not exceeding thirty days. Such publication is equivalent to personal service.

§ 1242. An appeal taken by the people in no case stays or affects the operation of a judgment in favor of the defendant, until judgment is reversed.

§ 1243. An appeal to the Supreme Court from a judgment of conviction, stays the execution of the judgment in all capital cases, and in all other cases upon filing with the clerk of the court in which the conviction was had, a certificate of the judge of such court, or of a justice of the Supreme Court, that, in his opinion, there is probable cause for the appeal, but not otherwise. [Amendment approved March 30, 1874; Amendments 1873-4, p. 450. In effect July 1, 1874.]

The amendment added the words after judgment "in all capital cases and in all other cases."

§ 1244. If the certificate provided for in the preceding section is filed, the sheriff must, if the defendant be in his custody, upon being served with a copy thereof, keep the defendant in his custody without executing the judgment, and detain him to abide the judgment on appeal.

§ 1245. If before the granting of the certificate, the judgment has commenced, the further execution thereof is suspended, and upon service of a copy of such certificate the defendant must be restored, by the officer in whose custody he is, to his original custody.

§ 1246. Upon the appeal being taken, the clerk of the court with whom the notice of appeal is al-

ed must, within twenty days thereafter, in case the bill of exceptions has been settled by the judge before the giving of said notice, but if not, then within twenty days from the settlement of the bill of exceptions, without charge, transmit to the clerk of the appellate court fifteen printed copies (one of which shall be certified to and be the original) of the notice of appeal, the record, and of all bills of exceptions; and, upon the receipt thereof, the clerk of the appellate court must file the original, and dispose of the copies as he is required to do in the case of transcripts on appeal in civil cases, and all his services as provided herein must be without charge. The clerk of the lower court must also within the time above specified serve printed copies of the above named papers, without charge, upon the defendant's attorney, and upon the attorney general. The printing of the above named papers is a county charge. [Amendment approved March 19, 1889; Stats. 1889, p. 324.]

CHAPTER II.

DISMISSING AN APPEAL FOR IRREGULARITY.

§ 1248. For what irregularity, and how dismissed.

§ 1249. Dismissal for want of a return.

§ 1248. If the appeal is irregular in any substantial particular, but not otherwise, the appellate court may, on any day, on motion of the respondent, upon five days' notice, accompanied with copies of the papers upon which the motion is founded, order it to be dismissed. [Amendment approved April 9, 1880; Amendments 1880, p. 10. In effect April 9, 1880.]

§ 1249. The court may also, upon like motion, dismiss the appeal, if the return is not made as

provided in section one thousand two hundred and forty-six, unless for good cause they enlarge the time for the purpose.

CHAPTER III.

ARGUMENT OF THE APPEAL.

- § 1252. Appeals, when to be heard and determined.
- § 1253. Judgment cannot be reversed without argument.
- § 1254. Number of counsel to be heard.
- § 1255. Defendant need not be present.

§ 1252. All appeals in criminal cases must be heard and determined by the appellate court, within sixty days after the record is filed in said appellate court, unless continued on motion or with the consent of the defendant. [Amendment approved April 9, 1880; Amendments 1880, p. 10. In effect April 9, 1880.]

§ 1253. The judgment may be affirmed if the appellant fail to appear, but can be reversed only after argument, though the respondent fail to appear.

§ 1254. Upon the argument of the appeal, if the offense is punishable with death, two counsel must be heard on each side, if they require it. In any other case the court may, in its discretion, restrict the argument to one counsel on each side.

§ 1255. The defendant need not personally appear in the appellate court.

CHAPTER IV.

JUDGMENT UPON APPEAL.

- § 1258. Judgment without regard to technical errors.
- § 1259. What may be reviewed on an appeal by defendant.
- § 1260. May reverse, affirm, or modify the judgment, and order new trial.
- § 1261. New trial, where to be had.
- § 1262. Defendant discharged on reversal of judgment.
- § 1263. Judgment to be executed on affirmance.
- § 1264. Judgment of appellate court, how entered and re-mitted.
- § 1265. Jurisdiction ceases after judgment remitted.

§ 1258. After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties.

§ 1259. Upon an appeal taken by the defendant from a judgment, the court may review any intermediate order or ruling involving the merits, or which may have affected the judgment.

§ 1260. The court may reverse, affirm, or modify the judgment or order appealed from, and may set aside, affirm, or modify any or all of the proceedings subsequent to, or dependent upon, such judgment or order, and may, if proper, order a new trial.

§ 1261. When a new trial is ordered, it must be directed to be had in the court of the county from which the appeal was taken.

§ 1262. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his

bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

§ 1263. If a judgment against the defendant is affirmed, the original judgment must be enforced.

§ 1264. When the judgment of the appellate court is given, it must be entered in the minutes, and a certified copy of the entry forthwith remitted to the clerk of the court from which the appeal was taken.

§ 1265. After the certificate of the judgment has been remitted to the court below, the appellate court has no further jurisdiction of the appeal or of the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the certificate is remitted.

TITLE X.

MISCELLANEOUS PROCEEDINGS.

- Chap. I. Bail, §§ 1268-1317.
- II. Who may be Witnesses in Criminal Actions, §§ 1321-3.
- III. Compelling the Attendance of Witnesses, §§ 1326-33.
- IV. Examination of Witnesses Conditionally, §§ 1335-46.
- V. Examination of Witnesses on Commission, §§ 1349-62.
- VI. Inquiry into the Insanity of the Defendant before Trial or after Conviction, §§ 1367-73.
- VII. Compromising certain Public Offenses by leave of the Court, §§ 1377-9.
- VIII. Dismissal of the Action, before or after Indictment, for want of Prosecution or otherwise, §§ 1382-7.
- IX. Proceedings against Corporations, §§ 1390-7.
- X. Entitling Affidavits, § 1401.
- XI. Errors and Mistakes in Pleadings and other Proceedings, § 1404.
- XII. Disposal of Property Stolen or Embezzled, §§ 1407-13.
- XIII. Reprieves, Commutations, and Pardons, §§ 1417-23.

Penal Code—34.

CHAPTER I.

BAIL.

Article I. In what cases the defendant may be admitted to bail.

II. Bail upon being held to answer before indictment.

III. Bail upon an indictment before conviction.

IV. Bail on appeal.

V. Deposit instead of bail.

VI. Surrender of the defendant.

VII. Forfeiture of the undertaking of bail or of the deposit of money.

VIII. Recommittment of the defendant after having given bail or deposited money instead of bail.

ARTICLE I.

IN WHAT CASES THE DEFENDANT MAY BE ADMITTED TO BAIL.

§ 1268. Admission to bail defined.

§ 1269. Taking of bail defined.

§ 1270. Offense not bailable.

§ 1271. Defendant when admitted to bail before conviction.

§ 1272. When admitted to bail after conviction and upon appeal.

§ 1273. Nature of bail.

§ 1274. When bail is matter of discretion, notice of application must be given to district attorney.

§ 1268. Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Bail, where taken: See sec. 1284.

§ 1269. The taking of bail consists in the acceptance by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this State a specified sum.

See ante, sec. 822.

Excessive bail.—Excessive bail shall not be required: Cal. Const., art. 1, sec. 6; U. S. Const., Amendment 8.

§ 1270. A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom.

Constitutional provision.—All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great: Art. 1, sec. 6.

§ 1271. If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

§ 1272. After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail—

1. As a matter of right, when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases.

§ 1273. If the offense is bailable, the defendant may be admitted to bail before conviction—

1. For his appearance before the magistrate, on the examination of the charge, before being held to answer.

2. To appear at the court to which the magistrate is required to return the depositions and statement, upon the defendant being held to answer after examination.

3. After indictment, either before the bench-warrant is issued for his arrest, or upon any order of the court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in

which it is found, or to which it may be transferred for trial.

And after conviction, and upon an appeal—

1. If the appeal is from a judgment imposing a fine only, on the undertaking of bail that he will pay the same, or such part of it as the appellate court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

2. If judgment of imprisonment has been given, that he will surrender himself in execution of the judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the court to which said cause may be remanded, and submit himself to the orders and process thereof. [Amendment, approved February 15, 1876; Amendments 1875-6, p. 116. In effect in sixty days.]

See ante, secs. 1269-70.

§ 1274. When the admission to bail is a matter of discretion, the court or officer to whom the application is made must require reasonable notice thereof to be given to the district attorney of the county.

ARTICLE II.

BAIL UPON BEING HELD TO ANSWER BEFORE INDICTMENT.

§ 1277. What magistrates may admit to bail.

§ 1278. Bail, how put in, and form of the undertaking.

§ 1279. Qualifications of bail.

§ 1280. Bail, how to justify.

§ 1281. On allowance of bail, defendant to be discharged.

§ 1277. When the defendant has been held to answer upon an examination for a public offense, the admission to bail may be by the magistrate

by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

§ 1278. Bail is put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the magistrate) and acknowledged before the court or magistrate, in substantially the following form:

"An order having been made on the — day of —, A. D. eighteen —, by A B, a justice of the peace of — county, (or as the case may be) that C D be held to answer upon a charge (stating briefly the nature of the offense), upon which he has been admitted to bail in the sum of — dollars; we, E F and G H, (stating their place of residence, and occupation) hereby undertake that the above-named C D will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself amenable to the orders and process of the court, and if convicted, will appear for judgment, and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of — dollars" (inserting the sum in which the defendant is admitted to bail).

§ 1279. The qualifications of bail are as follows:

1. Each of them must be a resident, household-er, or freeholder with in the State; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered.

2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

Stats. 1855, 269, sec. 1.

§ 1280. The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner as he may deem proper.

§ 1281. Upon the allowance of bail and the execution of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer, the defendant must be discharged.

ARTICLE III.

BAIL UPON AN INDICTMENT BEFORE CONVICTION.

§ 1284. When offense is not capital.

§ 1285. When the offense is capital.

§ 1286. Bail on habeas corpus.

§ 1287. Form of undertaking.

§ 1288. Sections applicable to qualifications, etc.

§ 1289. Increase or reduction of bail.

§ 1284. When the offense charged is not punishable with death, the officer serving the bench-warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail. [Amendment, approved April 9, 1880; Amendments 1880, p. 26. In effect April 9, 1880.]

§ 1285. If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench-warrant. [Amendment, approved April 9, 1880; Amendments 1880, p. 26. In effect April 9, 1880.]

§ 1286. When the defendant is so delivered into custody, he must be held by the sheriff, unless

admitted to bail on examination upon a writ of habeas corpus.

Offense not bailable: See sec. 1270.

Bail on habeas corpus: Sec. 1277.

§ 1287. The bail must be put in by a written undertaking, executed by two sufficient sureties, (with or without the defendant, in the discretion of the court or magistrate) and acknowledged before the court or magistrate, in substantially the following form:

"An indictment having been found on the — day of —, A. D. eighteen —, in the County Court of the county of — charging A B with the crime of —, (designating it generally) and he having been admitted to bail in the sum of — dollars, we, C D and E F, of — (stating their place of residence and occupation) hereby undertake that the above-named A B will appear and answer the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself amenable to the orders and process of the court, and, if convicted, will appear for judgment and render himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of — dollars" (inserting the sum in which the defendant is admitted to bail).

Undertaking.—The justification forms no part of the contract, and in no manner affects the liability of the sureties: See ante, 1278, note; and post, sec. 1473, et seq.

Action on forfeiture: Sec. 1306.

§ 1288. The provisions contained in sections twelve hundred and seventy-nine, twelve hundred and eighty, and twelve hundred and eighty-one, in relation to bail before indictment, apply to bail after indictment. [Amendment, approved March

30, 1874; Amendments 1873-4, p. 450. In effect July 1, 1874.]

§ 1289. After a defendant has been admitted to bail upon an indictment or information, the court in which the charge is pending, may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the district attorney, [Amendment, approved April 9, 1880; Amendments 1880, p. 26. In effect April 9, 1880.]

ARTICLE IV.

BAIL ON APPEAL.

§ 1291. Who may admit to bail.

§ 1292. Bail, qualifications of, and condition of undertaking.

§ 1291. In cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus, or by the magistrate before whom the trial was had. [Amendment, approved February 25, 1878; Amendments 1877-8, p. 122. In effect February 25, 1878.]

Stats. 1851, 212. See ante, secs. 852-4, 829, 862, 874-5, 982-5.

§ 1292. The bail must possess the qualifications, and must be put in, in all respects, as provided in article two of this chapter, except that the undertaking must be conditioned as prescribed in section twelve hundred and seventy-three, for undertakings of bail on appeal.

ARTICLE V.

DEPOSIT INSTEAD OF BAIL.

§ 1295. Deposit, when and how made.

§ 1296. May, after bail is given and before forfeiture.

§ 1297. Deposit to be applied to payment of judgment and fine.

§ 1295. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order, and upon delivering to the officer in whose custody he is a certificate of the deposit, he must be discharged from custody.

Return of deposit before forfeiture: Sec. 1302, post.

§ 1296. If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

§ 1297. When money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine, the county clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant.

ARTICLE VI.

SURRENDER OF THE DEFENDANT.

- § 1301. Defendant, how surrendered.
- § 1300. Surrender, by whom, when, and how made.
- § 1302. Return of deposit on surrender.

§ 1300. At any time before the forfeiture of their undertaking the bail may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

1. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledge the surrender.

2. Upon the undertaking and the certificate of the officer, the court in which the action or appeal is pending may, upon notice of five days to the district attorney of the county, with a copy of the undertaking and certificate, order that the bail be exonerated, and on filing the order and the papers used on the application, they are exonerated accordingly.

§ 1301. For the purpose of surrendering the defendant, the bail, at any time before they are finally discharged, and at any place within the state, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

§ 1302. If money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself to the offi-

cer to whom the commitment was directed, in the manner provided in the last two sections, the court must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

Deposit instead of bail: Sec. 1295, ante.

ARTICLE VII.

FORFEITURE OF THE UNDERTAKING OF BAIL OR OF THE DEPOSIT OF MONEY.

§ 1305. How forfeited, and how forfeiture discharged.

§ 1306. Forfeiture to be enforced by action.

§ 1307. Deposit, when forfeited, how disposed of.

§ 1305. If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon declared forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking or the deposit to be discharged upon such terms as may be just.

§ 1306. If the forfeiture is not discharged, as provided in the last section, the district attorney may at any time after the adjournment of the court proceed by action only against the bail upon their undertaking.

District attorney authorized to bring action: Pol. Code, sec. 4256, subd. 3.

§ 1307. If, by reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, immediately after the final adjournment of the court, pay over the money deposited to the county treasurer.

ARTICLE VIII.

RECOMMITMENT OF THE DEFENDANT, AFTER HAVING GIVEN BAIL OR DEPOSITED MONEY INSTEAD OF BAIL.

- § 1310. In what cases.
- § 1311. Contents of order.
- § 1312. Defendant may be arrested in any county.
- § 1313. If for failure to appear, defendant must be committed.
- § 1314. If for other cause, he may be admitted to bail.
- § 1315. Bail in such case, by whom taken.
- § 1316. Form of the undertaking.
- § 1317. Bail must possess what qualifications, and how put in.

§ 1310. The court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

1. When, by reason of his failure to appear, he has incurred a forfeiture of his bail, or of money deposited instead thereof.
2. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the State.
3. Upon an indictment being found or information filed in the cases provided in section nine

hundred and eighty-five. [Amendment, approved April 9, 1880; Amendments 1880, p. 27. In effect April 9, 1880.]

§ 1311. The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any sheriff, constable, marshal, or policeman, in this State, and committed to the officer in whose custody he was at the time he was admitted to bail, to be detained until legally discharged.

§ 1312. The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be indorsed by a magistrate of that county.

§ 1313. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

§ 1314. If the order be made for any other cause, and the offense is bailable, the court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

§ 1315. When the defendant is admitted to bail, the bail may be taken by any magistrate in the county having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court.

§ 1316. When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

Penal Code—35.

"An order having been made on the — day of —, A. D. eighteen —, by the court, (naming it) that A B be admitted to bail in the sum of — dollars, in an action pending in that court against him in behalf of the people of the State of California, upon an (information, presentment, indictment, or appeal, as the case may be), we, C D and E F, of (stating their places of residence and occupation), hereby undertake that the above-named A B will appear in that or any other court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or, if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of — dollars" (insert the sum in which the defendant is admitted to bail).

§ 1317. The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in article two of this chapter.

Qualifications of bail: Sec. 1279.

CHAPTER II.

WHO MAY BE WITNESSES IN CRIMINAL ACTIONS.

§ 1321. Who are competent witnesses.

§ 1322. When husband and wife are not competent witnesses.

§ 1323. When the defendant is not a competent witness.

§ 1321. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this Code.

Competency of witness: See Code Civ. Proc., sec. 1879.

Examination of witnesses: Sec. 2044, Code Civ. Proc.

Impeachment of witness: Code Civ. Proc., sec. 2051.

Attendance of witnesses: Secs. 1326, 1333.

Defendant as witness: Secs. 688, 1323.

Examination of witnesses conditionally: Sec. 1335.

Examination of witnesses on commission: Secs. 1349-1362.

Husband or wife as witness: Code Civ. Proc., sec. 1881, subd. 1, *supra*.

Interpreter, acts relating to appointment of: See post, Appendix, p. 576.

Interpreter, when sworn, Code Civ. Proc., sec. 1884, *supra*.

Juror as witness: Code Civ. Proc., sec. 1883, *supra*.

Rules of examination of witnesses: Code Civ. Proc., secs. 2042-2054.

Witness defined: Code Civ. Proc., sec. 1878, *supra*.

Witness, duties and rights of: Code Civ. Proc., secs. 2042-2054.

Witness, who competent to be: Code Civ. Proc., sec. 1879, *supra*.

Witness, who incompetent to be: Code Civ. Proc., sec. 1880, *supra*.

§ 1322. Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties. [Amendment, approved March 30, 1874; Amendments 1873-4, p. 451. In effect July 1, 1874.]

Husband or wife as witness: See Code Civ. Proc., sec. 1881, subd. 1.

§ 1323. A defendant in a criminal action or proceeding cannot be compelled to be a witness

against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people as to all matters about which he was examined in chief. His neglect or refusal to be a witness cannot in any manner prejudice him, nor be used against him on the trial or proceeding. [Amendment, approved March 30, 1874; Amendments 1873-4, p. 451. In effect July 1, 1874.]

CHAPTER III.

COMPELLING THE ATTENDANCE OF WITNESSES.

- § 1326. Subpoena defined, and who may issue.
- § 1327. Form of subpoena.
- § 1328. Subpoena, by whom and how served.
- § 1329. Expenses of witness from without the county, or poor.
- § 1330. Attendance of witness residing or served out of the county.
- § 1331. Disobedience to subpoena, etc.
- § 1332. Failure to appear, undertaking forfeited.
- § 1333. Temporary removal of imprisoned witness.

§ 1326. The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It may be signed and issued by—

1. A magistrate before whom a complaint is laid, for witnesses in the State, either on behalf of the people or of the defendant.

2. The district attorney, for witnesses in the State, in support of the prosecution, or for such other witnesses as the grand jury, upon an investigation pending before them, may direct.

3. The district attorney, for witnesses in the State, in support of an indictment or information, to appear before the court in which it is to be tried.

4. The clerk of the court in which an indictment or information is to be tried; and he must, at any time, upon application of the defendant, and without charge, issue as many blank sub-

poenas, subscribed by him as clerk, for witnesses in the State, as the defendant may require. [Amendment, approved April 9, 1880; Amendments 1880, p. 27. In effect April 9, 1880.]

Subpoena defined: Code Civ. Proc., sec. 1985.

§ 1327. A subpoena authorized by the last section must be substantially in the following form: "The people of the State of California to A B.:

"You are commanded to appear before C D, a justice of the peace of — township, in — county, (or as the case may be) at (naming the place), on (stating the day and hour), as a witness in a criminal action prosecuted by the people of the State of California against E F.

"Given under my hand this — day of —, A. D. eighteen —. G H, justice of the peace," (or "J K, district attorney," or "By order of the court, L M, clerk," or as the case may be). If books, papers, or documents are required, a direction to the following effect must be contained in the subpoena: "And you are required, also, to bring with you the following" (describing intelligibly the books, papers, or documents required).

§ 1328. A subpoena may be served by any person, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the people or of the defendant, and must, without delay, make a written return of the service, subscribed by him, stating the time and place of service. The service is made by showing the original to the witness personally, and informing him of its contents.

Subpoena, how served in civil cases: Code Civ. Proc., sec. 1987.

§ 1329. When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, upon a subpoena or in pursuance of an undertaking, and it appears that he has

against himself; but if he offer himself as a witness, he may be cross-examined by the counsel for the people as to all matters about which he was examined in chief. His neglect or refusal to be a witness cannot in any manner prejudice him, nor be used against him on the trial or proceeding. [Amendment, approved March 30, 1874; Amendments 1873-4, p. 451. In effect July 1, 1874.]

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1. A magistrate before whom a complaint is laid, for witnesses in the State, either on behalf of the people or of the defendant.
2. The district attorney, for witnesses in the State, in support of the prosecution, or for other witnesses as the grand jury, upon investigation pending before them, may direct.
3. The district attorney for witnesses in the State, in support of any criminal action, to appear before the court, or before a jury, to be tried.
4. The clerk of the court, for witnesses in the State, in support of any civil action, to appear before the court, or before a jury, to be tried.

so the undertaking is forfeited in the same manner as undertakings of bail.

§ 1333. When the testimony of a material witness for the people is required in a criminal action, before a court of record in this State, and such witness is a prisoner in the State prison, or in a county jail, an order for his temporary removal from such prison or jail, and for his production before such court, may be made by the court in which the action is pending, or by the judge thereof; but in case the prison or jail is out of the county in which the application is made, such order shall only be made upon the affidavit of the district attorney, or other person, on behalf of the people, showing that the testimony is material and necessary; and even then the granting of the order shall be in the discretion of the court or judge. The order shall be executed by the sheriff of the county in which it shall be made, whose duty it shall be to bring the prisoner before the proper court, to safely keep him, and when he is no longer required as a witness, to return him to the prison or jail whence he was taken; the expense of executing such order shall be paid by the county in which the order shall be made. [New section approved April 1, 1878; Amendments 1877-8, p. 123. In effect April 1, 1878.]

CHAPTER IV.

EXAMINATION OF WITNESSES CONDITIONALLY.

- § 1335. Witnesses examined conditionally for the defendant.
- § 1336. In what cases defendant may apply for the order.
- § 1337. Application, how made.
- § 1338. Application, to whom made.
- § 1339. Order, when granted and what to contain.
- § 1340. Examination in absence of district attorney.
- § 1341. If facts disproved, examination not to proceed.
- § 1342. Attendance of witness, how enforced.
- § 1343. Testimony, how taken and authenticated.
- § 1344. Deposition to be transmitted to clerk.
- § 1345. When may be read in evidence. Objections, etc.
- § 1346. Deposition of witness imprisoned in another county.

§ 1335. When a defendant has been held to answer a charge for a public offense, he may, either before or after an indictment or information, have witnesses examined conditionally, on his behalf, as prescribed in this chapter, and not otherwise. [Amendment, approved April 9, 1880; Amendments 1880, p. 27. In effect April 9, 1880.]

§ 1336. When a material witness for the defendant is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant may apply for an order that the witness be examined conditionally.

§ 1337. The application must be made upon affidavit, stating—

1. The nature of the offense charged.
2. The state of the proceedings in the action.
3. The name and residence of the witness, and that his testimony is material to the defense of the action.

4. That the witness is about to leave the State, or is so sick or infirm as to afford reasonable grounds for apprehending that he will not be able to attend the trial.

§ 1338. The applicatoin may be made to the court, or to a judge thereof, and must be made upon three days' notice to the district attorney. [Amendment, approved March 12, 1880; Amendments 1880, p. 5. In effect March 12, 1880.]

§ 1339. If the court or judge is satisfied that the examination of the witness is necessary, an order must be made that the witness be examined conditionally, at a specified time and place, and that a copy of the order be served on the district attorney, within a specified time before that fixed for the examination.

§ 1340. The order must direct that the examination be taken before a magistrate named therein, and on proof being furnished to such magistrate of service upon the district attorney of a copy of the order, if no counsel appear on the part of the people, the examination must proceed.

§ 1341. If the district attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate, by affidavit or other proof, or on the examination of the witness, that he is not about to leave the State, or is not sick or infirm, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place; otherwise it must proceed.

§ 1342. The attendance of the witness may be enforced by a subpoena, issued by the magistrate before whom the examination is to be taken.

§ 1343. The testimony given by the witness must be reduced to writing, and authenticated in the same manner as the testimony of a witness taken in support of an information.

§ 1344. The deposition taken must, by the magistrate, be sealed up and transmitted to the clerk of the court in which the action is pending or may come for trial.

§ 1345. The deposition or a certified copy thereof, may be read in evidence by either party on the trial, upon its appearing that the witness is unable to attend, by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the State. Upon reading the deposition in evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

§ 1346. When a material witness for a defendant, under a criminal charge, is a prisoner in the State prison, or in the county jail of a county other than that in which the defendant is to be tried, his deposition may be taken, on behalf of the defendant, in the manner provided for in the case of a witness who is sick, and the provisions of the Penal Code, commencing with section thirteen hundred and thirty-five, and ending with section thirteen hundred and forty-five, shall, so far as applicable, govern in the application for and in the taking and use of such deposition. Such deposition may be taken before any magistrate or notary public of the county in which the jail or prison is situated; or in case the witness is confined in the State prison, and the defendant is unable to pay for taking the deposition, before the warden or clerk of the board of directors of the State prison, whose duty it shall be to act without

compensation. Every officer, before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer, an oath to the witness that his testimony shall be the truth, the whole truth, and nothing but the truth. [Amendment, approved April 9, 1880; Amendments, 1880, p. 27. In effect April 9, 1880.]

CHAPTER V.

EXAMINATION OF WITNESSES ON COMMISSION.

- § 1349. Examination of witness residing out of the State.
- § 1350. When defendant may apply for an order to examine.
- § 1351. Commission defined.
- § 1352. Application made on affidavit.
- § 1353. Application, to whom made.
- § 1354. Order for commission, when granted, stay of proceedings.
- § 1355. Interrogations, how settled and allowed.
- § 1356. Direction as to the return of the commission.
- § 1357. Commission, how executed.
- § 1358. Returned commission, delivered to an agent.
- § 1359. Same.
- § 1360. When and how filed.
- § 1361. Commission and return, open for inspection. Copies, etc.
- § 1362. Depositions to be read in evidence. Objections.

§ 1349. When an issue of fact is joined upon an indictment or information, the defendant may have any material witness, residing out of the State, examined in his behalf, as prescribed in this chapter, and not otherwise. [Amendment, approved April 9, 1880; Amendments 1880, p. 28. In effect April 9, 1880.]

§ 1350. When a material witness for the defendant resides out of the State, the defendant may apply for an order that the witness be examined on a commission.

§ 1351. A commission is a process issued under the seal of the court and the signature of the clerk, directed to some person designated as commissioner, authorizing him to examine the witness upon oath or interrogatories annexed thereto, to take and certify the deposition of the witness, and to return it according to the directions given with the commission.

§ 1352. The application must be made upon affidavit, stating:

1. The nature of the offense charged.
2. The state of the proceedings in the action, and that an issue of fact has been joined therein.
3. The name of the witness, and that his testimony is material to the defense of the action.
4. That the witness resides out of the State.

§ 1353. The application may be made to the court, or a judge thereof, and must be upon three days' notice to the district attorney. [Amendment, approved March 12, 1880; Amendments 1880, p. 6. In effect March 12, 1880.]

§ 1354. If the court to whom the application is made is satisfied of the truth of the facts stated, and that the examination of the witness is necessary to the attainment of justice, an order must be made that a commission be issued to take his testimony; and the court may insert in the order a direction that the trial be stayed for a specified time, reasonably sufficient for the execution and return of the commission. [Amendment, approved April 9, 1880; Amendments 1880, p. 28. In effect April 9, 1880.]

§ 1355. When the commission is ordered, the defendant must serve upon the district attorney, without delay, a copy of the interrogatories to be

annexed thereto, with two days' notice of the time at which they will be presented to the court or judge. The district attorney may in like manner serve upon the defendant or his counsel cross-interrogatories, to be annexed to the commission, with the like notice. In the interrogatories either party may insert any questions pertinent to the issue. When the interrogatories and cross-interrogatories are presented to the court or judge, according to the notice given, the court or judge must modify the questions so as to conform them to the rules of evidence, and must indorse upon them his allowance and annex them to the commission.

§ 1356. Unless the parties otherwise consent, by an indorsement upon the commission, the court or judge must indorse thereon a direction as to the manner in which it must be returned, and may in his discretion, direct that it be returned by mail or otherwise, addressed to the clerk of the court in which the action is pending, designating his name and the place where his office is kept.

§ 1357. The commissioner, unless otherwise specially directed, may execute the commission as follows:

1. He must publicly administer an oath to the witness that his answers given to the interrogatories shall be the truth, the whole truth, and nothing but the truth.

2. He must cause the examination of the witness to be reduced to writing, and subscribed by him.

3. He must write the answers of the witness as near as possible in the language in which he gives them, and read to him each answer as it is taken down, and correct or add to it until it conforms to what he declares is the truth.

4. If the witness decline answering a question, that fact, with the reason assigned by him for declining, must be stated.

5. If any papers or documents are produced before him and proved by the witness, they, or copies of them, must be annexed to the deposition subscribed by the witness and certified by the commissioner.

6. The commissioner must subscribe his name to each sheet of the deposition, and annex the deposition with the papers and documents proved by the witness, or copies thereof, to the commission, and must close it up under seal, and address it as directed by the indorsement thereon.

7. If there be a direction on the commission to return it by mail, the commissioner must immediately deposit it in the nearest post office. If any other direction be made by the written consent of the parties, or by the court or judge, on the commission, as to its return, the commissioner must comply with the direction.

A copy of this section must be annexed to the commission. [Amendment, approved March 30, 1874; Amendments 1873-4, p. 451. In effect July 1, 1874.]

§ 1358. If the commission and return be delivered by the commissioner to an agent, he must deliver the same to the clerk to whom it is directed, or to the judge of the court in which the action is pending, by whom it may be received and opened, upon the agent making affidavit that he received it from the hands of the commissioner, and that it has not been opened or altered since he received it. Amendment, approved, April 9, 1880: Amendments 1880, p. 28. In effect April 9, 1880.]

§ 1359. If the agent is dead, or from sickness or other casualty unable personally to deliver the

commission and return, as prescribed in the last section, it may be received by the clerk or judge from any other person, upon his making an affidavit that he received it from the agent; that the agent is dead, or from sickness or other casualty unable to deliver it; that it has not been opened or altered since the person making the affidavit received it; and that he believes it has not been opened or altered since it came from the hands of the commissioner.

§ 1360. The clerk or judge receiving and opening the commission and return must immediately file it, with the affidavit mentioned in the last two sections, in the office of the clerk of the court in which the indictment is pending. If the commission and return is transmitted by mail, the clerk to whom it is addressed must receive it from the post office, and open and file it in his office, where it must remain, unless otherwise directed by the court or judge.

§ 1361. The commission and return must at all times be open to the inspection of the parties, who must be furnished by the clerk with copies of the same or of any part thereof, on payment of his fees.

§ 1362. The depositions taken under the commission may be read in evidence by either party on the trial, upon it being shown that the witness is unable to attend from any cause whatever; and the same objections may be taken to a question in the interrogatories or to an answer in the deposition, as if the witness had been examined orally in court.

CHAPTER VI.

INQUIRY INTO THE INSANITY OF THE DEFENDANT BEFORE TRIAL OR AFTER CONVICTION.

- § 1367. Insane person cannot be tried, or punished.
- § 1368. Doubts as to sanity of the defendant, how determined. Stay of proceedings on.
- § 1369. Trial of the question of insanity. Charge of the Court.
- § 1370. Verdict of the jury as to sanity, and proceedings thereon.
- § 1371. If defendant is committed, it exonerates his bail, etc.
- § 1372. Defendant detained in asylum until he becomes sane.
- § 1373. Expense of sending, etc., defendant to asylum.

§ 1367. A person cannot be tried, adjudged to punishment, or punished for a public offense, while he is insane.

Acquittal on the ground of insanity: Sec. 1167, ante.

§ 1368. When an action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arise as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity. [Amendment, approved April 9, 1880; Amendments 1880, p. 28. In effect April 9, 1880.]

Insanity as a defense generally: Sec. 26.

Order of trial: Sec. 1369.

Acquittal on the ground of insanity: See sec. 1167.

§ 1369. The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity.

2. The counsel for the people may then open their case, and offer evidence in support thereof.

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original cause.

4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury.

5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately. In other cases, the argument may be restricted to one counsel on each side.

6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

§ 1370. If the jury find the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury find the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to the State insane asylum, and that upon his becoming sane he be redelivered to the sheriff. [Amendment, approved April 9, 1880; Amendments 1880, p. 29. In effect April 9, 1880.]

§ 1371. The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person, authorized to receive the

property of the defendant, to a return of any money he may have deposited instead of bail.

§ 1372. If the defendant is received into the asylum, he must be detained there until he becomes sane. When he becomes sane, the superintendent must give notice of that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the asylum, and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.

§ 1373. The expenses of sending the defendant to the asylum, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or information filed; but the county may recover them from the estate of the defendant, if he have any, or from a relative, town, city, or county bound to provide for and maintain him elsewhere. [Amendment approved April 9, 1880; Amendments 1880, 29. In effect April 9, 1880.]

CHAPTER VII.

COMPROMISING CERTAIN PUBLIC OFFENSES BY LEAVE OF THE COURT.

§ 1377. Compromise of offenses for which civil action may be had.

§ 1378. Compromise by permission of the court bars another prosecution.

§ 1379. No public offense to be compromised except.

§ 1377. When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense has a remedy by civil action, the offense may be com-

promised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office.

2. Riotously.

3. With an intent to commit a felony.

§ 1378. If the party injured appears before the court to which the depositions are required to be returned, at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

Restoration of property embezzled, ground for mitigation of punishment: Sec. 513, ante.

§ 1379. No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this chapter.

CHAPTER VIII.

DISMISSAL OF THE ACTION BEFORE OR AFTER INDICTMENT FOR WANT OF PROSECUTION OR OTHERWISE.

- § 1382. When action may be dismissed.
- § 1383. Continuance and discharge from custody.
- § 1384. If action dismissed, defendant to be discharged, etc.
- § 1385. Dismissed on motion of court or application of district attorney.
- § 1386. Nolle prosequi abolished.
- § 1387. Dismissal a bar in misdemeanor, but not in felony, 1388, 1389.
- § 1388. Probationary treatment of juvenile delinquents.
- § 1389. Prohibiting minors to visit houses of ill-fame.

§ 1382. The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

1. Where a person has been held to answer for a public offense, if an indictment is not found or an information filed against him, within thirty days thereafter.

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within sixty days after the finding of the indictment, or filing of the information. [Amendment approved April 9, 1880; Amendments 1880, 29. In effect April 9, 1880.]

See ante, sec. 941.

§ 1383. If the defendant is not charged or tried as provided in the last section, and sufficient reason therefor is shown, the court may order the action to be continued from time to time, and in the mean time may discharge the defendant from custody on his own undertaking of bail for his appearance to answer the charge at the time to

which the action is continued. [Amendment approved April 9, 1880; Amendments 1880, 29. In effect April 9, 1880.]

§ 1384. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

See 54 Cal. 414.

§ 1385. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order an action or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

§ 1386. The entry of a nolle prosequi is abolished, and neither the attorney-general nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in the last section.

§ 1387. An order for the dismissal of the action, as provided in this chapter, is a bar to any other prosecution for the same offense, if it is a misdemeanor; but it is not a bar if the offense is a felony.

§ 1388. Final judgment may be suspended on any conviction, charge, or prosecution for misdemeanor or felony, where in the judgment of the court in which such proceeding is pending there is a reasonable ground to believe that such minor may be reformed, and that a commitment to prison would work manifest injury in the premises. Such suspension may be for as long a period as the circumstances of the case may seem to warrant, and subject to the following further provi-

sions: During the period of such suspension, or of any extension thereof, the court or judge may, under such limitations as may seem advisable, commit such minor to the custody of the officers or managers of any strictly non-sectarian charitable corporation conducted for the purpose of reclaiming criminal minors. Such corporation, by its officers or managers, may accept the custody of such minor for a period of two months (to be further extended by the court or judge should it be deemed advisable), and should said minor be found incorrigible and incapable of reformation, he may be returned before the court for final judgment for his misdemeanor. Such charitable corporation shall accept custody of said minor as aforesaid, upon the distinct agreement that it and its officers shall use all reasonable means to effect the reformation of such minor, and provide him with a home and instruction. No application for guardianship of such minor by any person, parent, or friend shall be entertained by any court during the period of such suspension and custody, save upon recommendation of the court before which the criminal proceedings are pending first obtained. Such court may further, in its discretion, direct the payment of the expenses of the maintenance of such minor during such period of two months, not to exceed, in the aggregate, the sum of \$25 (twenty-five dollars,) which sum shall include board, clothing, transportation, and all other expenses, to be paid by the county where such criminal proceeding is pending, or direct action to be instituted for the recovery thereof out of the estate of said minor, or from his parents. Such court may also revoke such order of suspension at any time. [Approved March 15, 1883. Stats. 1883, 377.]

§ 1389. That no minors in the employ of any telephone company, special delivery company, or

association, or any other corporation, or person or persons, engaged in the delivery of packages, letters, notes, messages or other matter, shall be assigned by such corporations, or person or persons, to hire such minors to the keepers of houses, variety theaters, or other places of questionable repute, or to other persons connected with such places of questionable repute, nor to permit them to enter such places of illegal or questionable calling; that this law shall apply alike to managers, superintendents, and agents of such corporations, and to be enforced against them. [New section approved March 15, 1887. Stats., 1887, 119. In effect March 15, 1887.]

CHAPTER IX.

PROCEEDINGS AGAINST CORPORATIONS.

- § 1390. Summons upon information against corporation.
- § 1391. Form of summons.
- § 1392. When and how served.
- § 1393. Examination of the charge.
- § 1394. Certificate of magistrate and return of depositions.
- § 1395. Grand jury to investigate if there is sufficient cause.
- § 1396. Appearance and plea.
- § 1397. Fine on conviction, how collected.

§ 1390. Upon an information or presentment against a corporation, the magistrate must issue a summons signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

§ 1391. The summons must be substantially in the following form: "County of (as the case may be.)

"The People of the State of California to the (naming the corporation):

"You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the information of A. B. (or the presentment of the grand jury of the county, as the case may be), for (designating the offense generally). "Dated at the city (or township) of —, this — day of —. eighteen —. "G. H., Justice of the Peace," (or as the case may be).

§ 1392. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

§ 1393. At the appointed time in the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

§ 1394. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the deposition and certificate, as prescribed in section 1883.

§ 1395. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed, or the district attorney file an information thereon, as in case of a natural person held to answer. [Amendment approved April 9, 1880; Amendments 1880, 29. In effect April 9, 1880.]

§ 1396. If an indictment is found, or information filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases. [Amendment approved April 9, 1880; Amendments 1880, 29. In effect April 9, 1880.]

§ 1397. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

CHAPTER X.

ENTITLING AFFIDAVITS.

§ 1401. Affidavits defectively entitled, valid.

§ 1401. It is not necessary to entitle an affidavit or deposition in the action, whether taken before or after indictment or information, or upon an appeal; but if made without a title, or with an erroneous title, it is as valid and effectual for every purpose as if it were duly entitled, if it intelligibly refer to the proceeding, indictment, information, or appeal in which it is made. [Amendment approved April 9, 1880; Amendments 1880, 29. In effect April 9, 1880.]

CHAPTER XI.

ERRORS AND MISTAKES IN PLEADINGS AND OTHER PROCEEDINGS.

§ 1404. When not material.

§ 1404. Neither a departure from the form or mode prescribed by this Code in respect to any Penal Code—37.

pleading or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant, or tended to his prejudice, in respect to a substantial right.

CHAPTER XII.

DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

- § 1407. Peace officer must hold property subject to the order of magistrate.
- § 1408. Order for its delivery to owner.
- § 1409. Magistrate must deliver it to owner.
- § 1410. Court in which trial is had may order its delivery.
- § 1411. Delivered to county treasurer if not claimed in six months.
- § 1412. Receipt for money, etc., taken from person arrested.
- § 1413. Record of property alleged to be stolen.

§ 1407. When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer, he must hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

§ 1408. On satisfactory proof of the ownership of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling it, must order it to be delivered to the owner, on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the owner to demand and receive the property.

§ 1409. If property stolen or embezzled comes into custody of the magistrate, it must be delivered to the owner on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

§ 1410. If the property stolen or embezzled has not been delivered to the owner, the court before which a trial is had for stealing or embezzling it may, on proof of his title, order it to be restored to the owner.

§ 1411. If the property stolen or embezzled is not claimed by the owner before the expiration of six months from the conviction of a person for stealing or embezzling it, the magistrate or other officer having it in custody must, on the payment of the necessary expenses incurred in its preservation, deliver it to the county treasurer, by whom it must be sold and the proceeds paid into the county treasury.

§ 1412. When money or other property is taken from a defendant, arrested upon a charge of a public offense, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or the kind of property taken; one of which receipts he must deliver to the defendant and the other of which he must forthwith file with the clerk of the court to which the depositions and statement are to be sent. When such property is taken by a police officer of any incorporated city or town, he must deliver one of the receipts to the defendant, and one, with the property, at once to the clerk or other person in charge of the police office in such city or town.

§ 1413. The clerk in, or person having charge of, the police office in any incorporated city or town, must enter in a suitable book a description of every article of property alleged to be stolen or embezzled, and brought into the office or taken from the person of a prisoner, and must attach a number to each article, and make a corresponding entry thereof.

CHAPTER XIII.

REPRIEVES, COMMUTATIONS, AND PARDONS.

- § 1417. Governor may grant reprieves, commutations, and pardons.
- § 1418. His power in respect to convictions for treason.
- § 1419. To communicate to the Legislature reprieves, commutations, and pardons.
- § 1420. Report of case, how and from whom required.
- § 1421. Notice to district attorney of application for pardon.
- § 1422. Publication of notice.
- § 1423. When two preceding sections are not applicable.

§ 1417. The governor has power to grant reprieves, commutations, and pardons after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to the regulations provided in this chapter.

Pardoning power: See Fed. Const., art. ii, sec. 2, subd. 1; Const. of Cal., art. vii., sec. 1.

§ 1418. He may suspend the execution of the sentence, upon a conviction for treason, until the case can be reported to the legislature at its next meeting, when the legislature may either pardon, direct the execution of the sentence, or grant a further reprieve; provided, that neither the governor nor the legislature shall have power to grant pardons or commutations of sentence in any case where the convict has been twice convicted of felony, after the first day of January, eighteen hundred and eighty, unless upon the written recommendation of a majority of the judges of the Supreme Court. [Amendment approved February 18, 1880; Amendments 1880, 2. In effect February 18, 1880.]

§ 1419. He must, at the beginning of every session, communicate to the legislature each case of reprieve, commutation, or pardon, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, and the reasons for granting the same. [Amendment approved February 18, 1880; Amendments 1880, 3. In effect February 18, 1880.]

§ 1420. When an application is made to the governor for a pardon, he may require the judge of the court before which the conviction was had or the district attorney by whom the action was prosecuted, to furnish him, without delay, with a statement of the facts proved on the trial, and of any other facts having reference to the propriety of granting or refusing the pardon.

§ 1421. At least ten days before the governor acts upon an application for pardon, written notice of the intention to apply therefor, signed by the person applying, must be served upon the district attorney of the county where the conviction was had, and proof, by affidavit, of the service must be presented to the governor.

§ 1422. Unless dispensed with by the governor, a copy of the notice must also be published for thirty days from the first publication, in a paper in the county in which the conviction was had.

§ 1423. The provisions of the two preceding sections are not applicable—

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten days of its expiration.

TITLE XI.

OF PROCEEDINGS IN JUSTICES' AND POLICE COURTS, AND APPEALS TO SUPERIOR COURTS.

Chapter I. Proceedings in Justices' and Police Courts, §§ 1426-61.

II. Appeals to Superior Courts, §§ 1466-70.

CHAPTER I.

PROCEEDINGS IN JUSTICES' AND POLICE COURTS.

- § 1426. Proceedings must be commenced by complaint.
- § 1427. When warrant of arrest must issue. Form of warrant.
- § 1428. Minutes, how kept.
- § 1429. The plea, and how put in.
- § 1430. Issue, how tried.
- § 1431. Change of venue, when granted.
- § 1432. Proceedings on change of venue.
- § 1433. Postponement of the trial.
- § 1434. Defendant to be present.
- § 1435. Jury trial, how waived.
- § 1436. Challenges.
- § 1437. Oath of jurors.
- § 1438. Trial, how conducted.
- § 1439. Court to decide questions of law, but not of fact.
- § 1440. Jury may decide in court, or retire.
- § 1441. Verdict of jury, how delivered and entered.
- § 1442. Verdict, when several defendants are tried together.
- § 1443. Jury, when to be discharged without a verdict.
- § 1444. If discharged, defendant may be tried again.
- § 1445. Proceedings on plea of guilty, or on conviction.
- § 1446. Judgment of fine may direct imprisonment.
- § 1447. Defendant, on acquittal, to be discharged. Costs.
- § 1448. Judgment against prosecutor for costs.
- § 1449. Judgment, when to be rendered.
- § 1450. Motion for a new trial, or in arrest of judgment.
- § 1451. New trial, grounds of.
- § 1452. Grounds of motion in arrest of judgment.
- § 1453. Judgment to be entered in the minutes.

- § 1454. Discharge of defendant on judgment of acquittal or fine only.
- § 1455. Judgment of imprisonment, how executed.
- § 1456. Judgment of imprisonment until fine is paid, how executed.
- § 1457. Fines, disposition of.
- § 1458. Defendant may be admitted to bail.
- § 1459. Subpoenas.
- § 1460. Entitling affidavits.
- § 1461. "Police Courts" defined.

§ 1426. All proceedings and actions before a Justices' or Police Court, for a public offense of which such courts have jurisdiction, must be commenced by complaint under oath, setting forth the offense charged, with such particulars of time, place, person, and property, as to enable the defendant to understand distinctly the character of the offense complained of, and to answer the complaint.

Police courts, organization, etc.: See Polit. Code, secs. 4424 et seq.

Justices' courts, organization, etc.: See Code Civ. Proc., secs. 85 et seq.

§ 1427. If the justice of the peace, or police justice, is satisfied therefrom that the offense complained of has been committed, he must issue a warrant of arrest, which must be substantially in the following form:

"County of —.

"The People of the State of California to any sheriff, constable, marshal, or policeman in this State:

"Complaint upon oath having been this day made before me —, (justice of the peace or police justice, as the case may be) by C. D., that the offense of (designating it generally) has been committed, and accusing E. F. thereof; you are therefore commanded forthwith to arrest the above

named E. F. and bring him before me forthwith, at (naming the place).

"Witness my hand and seal at —, this — day of —, A. D. —. A. B."

Arrest by peace-officer: Sec. 836.

Arrest by private person: Sec. 837.

Arrest by oral order of magistrate: Sec. 838.

Duty of officer or person making arrest: Secs. 847, 848.

Warrant of arrest, form of: Sec. 814.

§ 1428. A docket must be kept by the justice of the peace, or police justice, or by the clerk of the courts held by them, if there is one, in which must be entered each action, and the proceedings of the court therein.

§ 1429. The defendant may make the same plea as upon an indictment, as provided in section ten hundred and sixteen. His plea must be oral, and entered in the minutes. If the defendant plead guilty, the court may, before entering such plea or pronouncing judgment, examine witnesses to ascertain the gravity of the offense committed; and if it appear to the court that a higher offense has been committed than the offense charged in the complaint, the court may order the defendant to be committed or admitted to bail, to answer any indictment which may be found against him by the grand jury, or any information which may be filed by the district attorney. [Amendment approved April 9, 1880; Amendments 1880, 30. In effect April 9, 1880.]

See ante, sec. 1016.

§ 1430. Upon a plea other than a plea of guilty, if the parties waive a trial by jury, and an adjournment or change of venue is not granted, the court must proceed to try the case. [Amendment

approved February 25, 1880; Amendments 1880, 5. In effect February 25, 1880.]

Jury trial, how waived: Sec. 1435.

§ 1431. If the action or proceeding is in a Justice's Court, a change of the place of trial may be had at any time before the trial commences—

1. When it appears from the affidavit of the defendant that he has reason to believe, and does believe, that he cannot have a fair and impartial trial before the justice about to try the case, by reason of the prejudice or bias of such justice, the cause must be transferred to another justice of the same or an adjoining township.

2. When it appears from affidavits that the defendant cannot have a fair and impartial trial, by reason of the prejudice of the citizens of the township, the cause must be transferred to a justice of the township where the same prejudice does not exist.

Subd. 1. Ante, secs. 1033 and 1034.

Subd. 2. Sufficiency of affidavits—ante, secs. 1033 and 1034.

§ 1432. When a change of the place of trial is ordered, the justice must transmit to the justice before whom the trial is to be had all the original papers in the cause, with a certified copy of the minutes of his proceedings; and upon receipt thereof, the justice to whom they are delivered must proceed with the trial in the same manner as if the proceeding or action had been originally commenced in his court.

Transfer of records, etc., of the action: Sec. 1036.

Duty of court on receipt of records: Sec. 1038.

§ 1433. Before the commencement of a trial in any of the courts mentioned in this chapter, either

party may, upon good cause shown, have a reasonable postponement thereof.

§ 1434. The defendant must be personally present before the trial can proceed.

Presence of defendant.—See ante, sec. 1052.

§ 1435. A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket. The formation of the jury is provided for in chapter one, title three, part one, of the Code of Civil Procedure. [Amendment approved February 25, 1880; Amendments 1880, 5. In effect February 25, 1880.]

Constitutional provision.—“A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court. . . . In cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court”: Const. Cal., art. 1, sec. 7.

§ 1436. The same challenges may be taken by either party to the panel of jurors, or to any individual juror, as on the trial of an indictment for a misdemeanor; but the challenge must in all cases be tried by the court.

Challenges.—See ante, secs. 1078-85; grounds of challenge—see ante, secs. 1058-88.

General causes of challenge: Sec. 1072.

Particular causes of challenge: Sec. 1073.

Challenge to individual juror: Sec. 1067.

Challenge to the panel of jurors: Sec. 1058.

Number of peremptory challenges: Sec. 1070.

§ 1437. The court must administer to the jury the following oath: “You do swear that you will well and truly try this issue between the People of the State of California and A. B., the defendant,

and a true verdict render according to the evidence."

§ 1438. After the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant.

Conduct of the trial: Sec. 1093.

§ 1439. The court must decide all questions of law which may arise in the course of the trial, but can give no charge with respect to matters of fact.

See ante, secs. 1124-27.

Duty of court in charging the jury: Sec. 1127.

Questions of fact.—Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law: Const. Cal., art. 6, sec. 10.

In case of libel: See secs. 251, 1125.

§ 1440. After hearing the proofs and allegations, the jury may decide in court, or may retire for consideration. If they do not immediately agree, an officer must be sworn to the following effect: "You do swear that you will keep this jury together in some quiet and convenient place; that you will not permit any person to speak to them, nor speak to them yourself, unless by order of the court, or to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court."

Deliberations of the jury: Sec. 1128.

§ 1441. The verdict of the jury must in all cases be general. When the jury have agreed on their verdict, they must deliver it publicly to the court, who must enter, or cause it to be entered, in the minutes.

Verdict, general and special: Sec. 1151, ante.

§ 1442. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

Verdict as to one of several defendants: Sec. 1160.

§ 1443. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

See ante, secs. 1139, 1140.

§ 1444. If the jury is discharged, as provided in the last section, the court may proceed again to the trial, in the same manner as upon the first trial, and so on, until a verdict is rendered.

Retrial: Sec. 1141.

§ 1445. When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be. [Amendment approved March 30, 1874; Amendments 1873-4, 453. In effect July 1, 1874.]

§ 1446. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine be satisfied, in the proportion of one day's imprisonment for every dollar of the fine. [Amendment approved March 7, 1874; Amendments 1873-4, 455. In effect in 60 days.]

§ 1447. When the defendant is acquitted, either by the court or by the jury, he must be immediately discharged; and if the court certify in the minutes that the prosecution was malicious or

without probable cause, it may order the prosecutor to pay the costs of the action, or to give satisfactory security by a written undertaking, with one or more sureties, to pay the same within thirty days after the trial.

§ 1448. If the prosecutor does not pay the costs, or give security therefor, the court may enter judgment against him for the amount thereof, which may be enforced in all respects in the same manner as a judgment rendered in a civil action.

§ 1449. After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear for judgment. [Amendment approved March 30, 1874; Amendments 1873-4, 454. In effect July 1, 1874.]

§ 1450. At any time before judgment, defendant may move for a new trial or in arrest of judgment.

Motion in arrest of judgment: Secs. 1185, 1452.

§ 1451. A new trial may be granted in the following cases:

1. When the trial has been had in the absence of the defendant, unless he voluntarily absent himself, with full knowledge that a trial is being had.

2. When the jury has received any evidence out of court.

3. When the jury has separated without leave of the court, after having retired to deliberate

upon their verdict, or been guilty of any misconduct tending to prevent a fair and due consideration of the case.

4. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of all the jurors.

5. When there has been error in the decision of the court, given on any question of law arising during the course of the trial.

6. When the verdict is contrary to law or evidence.

7. When new evidence is discovered material to the defendant, and which he could not, with reasonable diligence, have discovered and produced at the trial; but when a motion for a new trial is made upon this ground, the defendant must produce at the hearing the affidavits of the witnesses by whom such newly-discovered evidence is expected to be given.

See ante, secs. 1179-82.

§ 1452. The motion in arrest of judgment may be founded on any substantial defect in the complaint, and the effect of an arrest of judgment is to place the defendant in the same situation in which he was before the trial was had.

§ 1453. If the judgment is not arrested, or a new trial granted, judgment must be pronounced at the time appointed, and entered in the minutes of the court.

Judgment, rendition of: Sec. 1445.

§ 1454. If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

§ 1455. When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff, marshal, or other officer, which is a sufficient warrant for its execution.

Execution: See secs. 1213 and 1216.

§ 1456. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid.

Execution of judgment of fine or imprisonment: Sec. 1215.

§ 1457. Upon payment of the fine, the officer must discharge the defendant, if he is not detained for any other legal cause, and apply the money to the payment of the expenses of the prosecution, and pay over the residue, if any, within ten days, to the county or city treasurer, according as the offense is prosecuted in a justice's or police court. If a fine is imposed, and paid before commitment, it must be applied as prescribed in this section.

Disposition of fines: Sec. 1570.

§ 1458. The defendant, at any time after his arrest, and before conviction, may be admitted to bail. The provisions of this Code relative to bail are applicable to bail in Justices' or Police Courts.

Bail: Secs. 822, 1268.

§ 1459. The justice or judge of either of the courts mentioned in this chapter may issue subpoenas for witnesses, as provided in section thirteen hundred and twenty-six, and punish disobedience thereof, as provided in section one thousand three hundred and thirty-one.

Witness must attend: Sec. 2064, Code Civ. Proc.

§ 1460. The provisions of section one thousand four hundred and one, in respect to entitling affidavits, are applicable to proceedings in the courts mentioned in this chapter.

§ 1461. The term "Police Courts," as used in this and the succeeding chapter, includes Police Judges' Courts, Police Courts, and all courts held by mayors or recorders in incorporated cities or towns.

CHAPTER II.

APPEALS TO SUPERIOR COURTS.

§ 1466. Appeals, when allowed.

§ 1467. Appeals, how taken, heard, and determined.

§ 1468. Statement on appeal.

§ 1469. If new trial granted, in what court had.

§ 1470. Proceedings, if appeal is dismissed or judgment affirmed.

§ 1466. Either party may appeal to the Superior Court of the county from a judgment of a Justice's or Police Court, in like cases and for like cause as appeals may be taken to the Supreme Court. [Amendment approved April 12, 1880; Amendments 1880, 34. In effect April 12, 1880.]

Appeal by defendant: Sec. 1237.

Appeal by the people: Sec. 1238.

§ 1467. The appeal is taken, heard, and determined as provided in title nine, part two, of this Code.

Appeal, how taken: Sec. 1240.

Judgment on appeal: Sec. 1258.

§ 1468. The appeal to the Superior Court from the judgment of a Justice's or Police Court is heard upon a statement of the case settled by the justice or police judge, embodying such rulings of the

court as are excepted to, which statement must be filed with and settled by the court within ten days after filing notice of appeal. [Amendment approved April 12, 1880; Amendments 1880, 34. In effect April 12, 1880.]

§ 1469. If a new trial is granted upon appeal, it must be had in the Superior Court. [Amendment approved April 12, 1880; Amendments 1880, 35. In effect April 12th, 1880.]

§ 1470. If the appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the court below, which may proceed to enforce its sentence.

Jurisdiction: See Const. Cal., art. 6, sec. 5.

SPECIAL CRIMINAL PROCEEDINGS.

TITLE XII.

OF SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

- Chapter I. Of the Writ of Habeas Corpus, §§ 1473-1505.
- II. Of Coroners' Inquests and Duties of Coroners, §§ 1510-19.
- III. Of Search-warrants, §§ 1523-42.
- IV. Proceedings against Fugitives from Justice, §§ 1547-58.
- V. Miscellaneous Provisions respecting Special Proceedings of a Criminal Nature, §§ 1562-4.

CHAPTER I.

OF THE WRIT OF HABEAS CORPUS.

- § 1473. Who may prosecute writ.
- § 1474. Application for, how made.
- § 1475. By whom issued, and before whom returnable.
- § 1476. Writ must be granted without delay.
- § 1477. Writ, what to contain.
- § 1478. How served.
- § 1479. Proceedings upon disobedience to the writ.
- § 1480. Return, what to contain.
- § 1481. Body must be produced, when.
- § 1482. Hearing without production of the body.
- § 1483. Hearing on return.
- § 1484. Proceedings on the hearing.
- § 1485. When court may discharge the party.
- § 1486. When to remand party.
- § 1487. Grounds of discharge in certain cases.
- § 1488. Not to be discharged for defect of form in warrant.
- § 1489. Proceedings on defective warrant.
- § 1490. Writ for purposes of bail.
- § 1491. Judge may take bail.
- § 1492. Judge, when to remand.

- § 1493. Person in illegal, may be committed to legal custody.
- § 1494. Disposition of party, pending proceedings on return.
- § 1495. Defect of form in the writ immaterial, when.
- § 1496. Imprisonment after discharge, when permitted.
- § 1497. Warrant may issue instead of writ, in certain cases.
- § 1498. Warrant may include person charged with illegal detention.
- § 1499. Warrant, how executed.
- § 1500. Return and hearing on.
- § 1501. Party may be discharged or remanded.
- § 1502. Writ and process may issue at any time.
- § 1503. By whom issued and when returnable.
- § 1504. Where returnable.
- § 1505. Damages for failure to issue or obey the writ.

§ 1473. Every person unlawfully imprisoned or restrained of his liberty, under any pretense whatever, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment or restraint. [Amendment approved March 30, 1874; Amendments 1873-4, 454. In effect July 1, 1874.]

Who may prosecute: See Code of Civ. Proc., secs. 33, 34.

Privilege of, not to be suspended.—The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension: Const. Cal., art. 1, sec. 5; U. S. Const., art 1, sec. 9.

§ 1474. Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify—

1. That the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where, naming all the parties, if they are known, or describing them, if they are not known.

2. If the imprisonment is alleged to be illegal,

the petition must also state in what the alleged illegality consists.

3. The petition must be verified by the oath or affirmation of the party making the application.

§ 1475. The writ of habeas corpus may be granted—

1. By the supreme court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this State. When so issued it may be made returnable before the court, or any justice thereof, or before any superior court, or any judge thereof.

2. By the superior courts, or a judge thereof, upon petition by or on behalf of any person restrained of his liberty, in their respective counties. [Amendment approved February 18, 1880; Amendments 1880, p. 4. In effect February 18, 1880.]

§ 1476. Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must, if it appear that the writ ought to issue, grant the same without delay.

§ 1477. The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court or judge before whom the writ is returnable, at a time and place therein specified.

§ 1478. If the writ is directed to the sheriff or other ministerial officer of the court out of which it issues, it must be delivered by the clerk to such officer without delay, as other writs are delivered for service. If it is directed to any other person, it must be delivered to the sheriff, and be by him served upon such person by delivering the same to him without delay. If the person to whom the

writ is directed cannot be found, or refuses admittance to the officer or person serving or delivering such writ, it may be served or delivered by leaving it at the residence of the person to whom it is directed, or by affixing it to some conspicuous place on the outside either of his dwelling-house or of the place where the party is confined or under restraint.

§ 1479. If the person to whom the writ is directed refuses, after service, to obey the same, the court or judge, upon affidavit, must issue an attachment against such person, directed to the sheriff or coroner, commanding him forthwith to apprehend such person, and bring him immediately before such court or judge; and upon being so brought, he must be committed to the jail of the county until he makes due return to such writ, or is otherwise legally discharged.

§ 1480. The person upon whom the writ is served must state in his return, plainly and unequivocally,

1. Whether he has or has not the party in his custody, or under his power or restraint.
2. If he has the party in his custody or power, or under his restraint, he must state the authority and cause of such imprisonment or restraint.
3. If the party is detained by virtue of any writ, warrant, or other written authority, a copy thereof must be annexed to the return, and the original produced and exhibited to the court or judge on the hearing of such return.
4. If the person upon whom the writ is served had the party in his power or custody, or under his restraint, at any time prior or subsequent to the date of the writ of habeas corpus, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause, and by what authority, such transfer took place.

5. The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, it must be verified by his oath.

§ 1481. The person to whom the writ is directed, if it is served, must bring the body of the party in his custody or under his restraint, according to the command of the writ, except in the cases specified in the next section. .

§ 1482. When, from sickness or infirmity of the person directed to be produced, he cannot, without danger, be brought before the court or judge, the person in whose custody or power he is may state that fact in his return to the writ, verifying the same by affidavit. If the court or judge is satisfied of the truth of such return, and the return to the writ is otherwise sufficient, the court or judge may proceed to decide on such return and to dispose of the matter as if such party had been produced on the writ, or the hearing thereof may be adjourned until such party can be produced.

§ 1483. The court or judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return, and such other matters as may be properly submitted to their hearing and consideration.

§ 1484. The party brought before the court or judge, on the return of the writ, may deny or controvert any of the material facts or matters set forth in the return, or except to the sufficiency thereof, or allege any fact to show either that his imprisonment or detention is unlawful, or that he is entitled to his discharge. The court or judge must thereupon proceed in a summary way to hear

such proof as may be produced against such imprisonment or detention, or in favor of the same, and to dispose of such party as the justice of the case may require, and have full power and authority to require and compel the attendance of witnesses, by process of subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.

§ 1485. If no legal cause is shown for such imprisonment or restraint, or for the continuation thereof, such court or judge must discharge such party from the custody or restraint under which he is held.

§ 1486. The court or judge, if the time during which such party may be legally detained in custody has not expired, must remand such party, if it appears that he is detained in custody—

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of criminal jurisdiction, or of any process issued upon such judgment or decree.

§ 1487. If it appears on the return of the writ that the prisoner is in custody by virtue of process from any court of this State, or judge or officer thereof, such prisoner may be discharged in any of the following cases, subject to the restrictions of the last section:

1. When the jurisdiction of such court or officer has been exceeded.

2. When the imprisonment was at first lawful, yet by some act, omission, or event which has taken place afterwards, the party has become entitled to a discharge.

3. When the process is defective in some matter of substance required by law, rendering such process void.

4. When the process, though proper in form, has been issued in a case not allowed by law.

5. When the person having the custody of the prisoner is not the person allowed by law to detain him.

6. Where the process is not authorized by any order, judgment, or decree of any court, nor by any provision of law.

7. Where a party has been committed on a criminal charge without reasonable or probable cause.

§ 1488. If any person is committed to prison, or is in custody of any officer on any criminal charge, by virtue of any warrant of commitment of a justice of the peace, such person must not be discharged on the ground of any mere defect of form in the warrant of commitment.

§ 1489. If it appears to the court or judge, by affidavit or otherwise, or upon the inspection of the process or warrant of commitment, and such other papers in the proceedings as may be shown to the court or judge, that the party is guilty of a criminal offense, or ought not to be discharged, such court or judge, although the charge is defective or unsubstantially set forth in such process or warrant of commitment, must cause the complainant or other necessary witnesses to be subpoenaed to attend at such time as ordered, to testify before the court or judge; and upon the examination he may discharge such prisoner, let him to bail, if the offense be bailable, or recommit him to custody, as may be just and legal.

§ 1490. When a person is imprisoned or detained in custody on any criminal charge, for want of

bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

§ 1491. Any judge before whom a person who has been committed on a criminal charge may be brought on a writ of habeas corpus, if the same is bailable, may take an undertaking of bail from such person as in other cases, and file the same in the proper court.

§ 1492. If a party brought before the court or judge on the return of the writ is not entitled to his discharge, and is not bailed, where such bail is allowable, the court or judge must remand him to custody or place him under the restraint from which he was taken, if the person under whose custody or restraint he was is legally entitled thereto.

§ 1493. In cases where any party is held under illegal restraint or custody, or any other person is entitled to the restraint or custody of such party, the judge or court may order such party to be committed to the restraint or custody of such person as is by law entitled thereto.

§ 1494. Until judgment is given on the return, the court or judge before whom any party may be brought on such writ may commit him to the custody of the sheriff of the county, or place him in such care or under such custody as his age or circumstances may require.

§ 1495. No writ of habeas corpus can be disobeyed for defect of form, if it sufficiently appear therefrom in whose custody or under whose restraint the party imprisoned or restrained is, the officer or person detaining him, and the court or judge before whom he is to be brought. —

§ 1496. No person who has been discharged by the order of the court or judge upon habeas corpus can be again imprisoned, restrained, or kept in custody for the same cause, except in the following cases:

1. If he has been discharged from custody on a criminal charge, and is afterwards committed for the same offense, by legal order or process.

2. If, after a discharge for defect of proof, or for any defect of the process, warrant, or commitment in a criminal case, the prisoner is again arrested on sufficient proof and committed by legal process for the same offense.

§ 1497. When it appears to any court or judge, authorized by law to issue the writ of habeas corpus, that any one is illegally held in custody, confinement, or restraint, and that there is reason to believe that such person will be carried out of the jurisdiction of the court or judge before whom the application is made, or will suffer some irreparable injury before compliance with the writ of habeas corpus can be enforced, such court or judge may cause a warrant to be issued, reciting the facts, and directed to the sheriff, coroner, or constable of the county, commanding such officer to take such person thus held in custody, confinement, or restraint, and forthwith bring him before such court or judge, to be dealt with according to law.

§ 1498. The court or judge may also insert in such warrant a command for the apprehension of the person charged with such illegal detention and restraint.

§ 1499. The officer to whom such warrant is delivered must execute it by bringing the person therein named before the court or judge who directed the issuing of such warrant.

§ 1500. The person alleged to have such party under illegal confinement or restraint may make return to such warrant, as in case of a writ of habeas corpus, and the same may be denied, and like allegations, proofs, and trial may thereupon be had as upon a return to a writ of habeas corpus.

§ 1501. If such party is held under illegal restraint or custody, he must be discharged; and if not, he must be restored to the care or custody of the person entitled thereto.

§ 1502. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

§ 1503. All writs, warrants, process, and subpoenas authorized by the provisions of this chapter must be issued by the clerk of the court, and, except subpoenas, must be sealed with the seal of such court, and served and returned forthwith, unless the court or judge shall specify a particular time for any such return.

§ 1504. All such writs and process, when made returnable before a judge, must be returned before him at the county seat, and there heard and determined. [Amendment approved February 18, 1880; Amendments 1880, p. 4. In effect February 18, 1880.]

§ 1505. If any judge, after a proper application is made, refuses to grant an order for a writ of habeas corpus, or if the officer or person to whom such writ may be directed refuses obedience to the command thereof, he shall forfeit and pay to the person aggrieved a sum not exceeding five thousand dollars, to be recovered by action in any court of competent jurisdiction.

CHAPTER II.

OF CORONERS' INQUESTS AND DUTIES OF CORONERS.

- § 1510. Coroner to summon jury to inquire into cause of death.
- § 1511. Jurors to be sworn.
- § 1512. Witnesses to be summoned.
- § 1513. Witnesses compelled to attend.
- § 1514. Verdict of jury in writing. What to contain.
- § 1515. Testimony in writing, and where filed.
- § 1516. Exception.
- § 1517. Coroner to issue warrant, when.
- § 1518. Form of warrant.
- § 1519. How served.

§ 1510. When a coroner is informed that a person has been killed, or has committed suicide, or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by the act of another by criminal means, he must go to the place where the body is, cause it to be exhumed if it has been interred, and summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, to appear before him forthwith, at the place where the body of deceased is, to inquire into the cause of the death.

Inquest: See Pol. Code, secs. 4285, 4290.

Costs of inquest in States prison: See post, Appendix, p. 542.

Act providing for payment for chemical and post mortem examinations: See post, Appendix, p. 527.

Act relating to appointment of physician at inquest: See post, p. 525.

Act providing for attendance of physicians and surgeons: See post, Appendix, p. 527.

Coroners in San Francisco, act relating to: See post, Appendix, p. 528.

Acts furnishing assistants to coroners in certain cities: See post, Appendix, p. 540.

Act prescribing fees of coroners: See post, Appendix, p. 541.

Act providing short hand reporter at inquest: See post, Appendix, p. 526.

§ 1511. When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means, he came to his death, and into the circumstances attending his death; and to render a true verdict thereon, according to the evidence offered them or arising from the inspection of the body.

§ 1512. Coroners may issue subpoenas for witnesses, returnable forthwith, or at such time and place as they may appoint, which may be served by any competent person. They must summon and examine as witnesses every person who in their opinion, or that of any of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body, and give a professional opinion as to the cause of the death.

§ 1513. A witness served with a subpoena may be compelled to attend and testify, or punished by the coroner for disobedience, in like manner as upon a subpoena issued by a justice of the peace.

§ 1514. After inspecting the body and hearing the testimony, the jury must render their verdict and certify the same by an inquisition in writing, signed by them, and setting forth who the person killed is, and when, where, and by what means, he came to his death; and if he was killed, or his death occasioned by the act of another, by criminal means, who is guilty thereof.

§ 1515. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the superior court of

the county. [Amendment approved April 12, 1880; Amendments 1880, p. 35. In effect April 12, 1880.]

§ 1516. If, however, the person charged with the commission of the offense is arrested before the inquisition can be filed, the coroner must deliver the same, with the testimony taken, to the magistrate before whom such person may be brought, who must return the same, with the depositions and statement taken before him, to the office of the clerk of the superior court of the county. [Amendment approved April 12, 1880; Amendments 1880, p. 35. In effect April 12, 1880.]

§ 1517. If the jury find that the person was killed by another, under circumstances not excusable or justifiable by law, or that his death was occasioned by the act of another by criminal means, and the party committing the act is ascertained by the inquisition, and is not in custody, the coroner must issue a warrant, signed by him, with his name of office, into one or more counties, as may be necessary for the arrest of the person charged.

§ 1518. The coroner's warrant must be in substantially the following form:

"County of ———.

"The People of the State of California to any sheriff, constable, marshal, or policeman in this State:

"An inquisition having been this day found by a coroner's jury before me, stating that A. B. has come to his death by the act of C. D., by criminal means, (or as the case may be, as found by the inquisition) you are therefore commanded forthwith to arrest the above named C. D. and take him before the nearest or most accessible magistrate in this county.

"Given under my hand this ——— day of ———, A. D. eighteen ———. E. F., Coroner of the county of ———."

§ 1519. The coroner's warrant may be served in any county, and the officer serving it must proceed thereon, in all respects, as upon a warrant of arrest on an information before a magistrate, except that when served in another county it need not be indorsed by a magistrate of that county.

CHAPTER III.

OF SEARCH-WARRANTS.

- § 1523. Search-warrant defined.
- § 1524. Upon what ground it may issue.
- § 1525. It cannot be issued but upon probable cause, etc.
- § 1526. Magistrates must examine, on oath, complainant, etc.
- § 1527. Depositions, what to contain.
- § 1528. When to issue warrant.
- § 1529. Form of warrant.
- § 1530. By whom served.
- § 1531. Officer may break open door, etc., to execute warrant.
- § 1532. May break open door, etc., to liberate person acting in his aid.
- § 1533. When warrant may be served in the night.
- § 1534. Within what time warrant must be executed.
- § 1535. Officer to give receipt for property taken.
- § 1536. Property, how disposed of.
- § 1537. Return of warrant and inventory of property taken.
- § 1538. Copy of inventory, to whom delivered.
- § 1539. Proceedings, if grounds of warrant are controverted.
- § 1540. Property, when to be restored.
- § 1541. Depositions, warrants, etc., to be returned by magistrate to County Court.
- § 1542. Search of defendant in presence of magistrate.

§ 1523. A search-warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate.

In this country the right to such process depends upon statute, subject to the limitations im-

posed by constitutional provisions. In this State no such warrant can be issued, "but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized": State Const., art. 1, sec. 19. A like provision exists in the constitution of the United States, amendment 4.

§ 1524. It may be issued upon either of the following grounds:

1. When the property was stolen or embezzled; in which case it may be taken on the warrant, from any place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or from any person in whose possession it may be.

2. When it was used as the means of committing a felony; in which case it may be taken on the warrant from the place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or from any person in whose possession it may be.

3. When it is in the possession of any person with the intent to use it as the means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered; in which case it may be taken on the warrant from such person, or from any place occupied by him or under his control, or from the possession of the person to whom he may have so delivered it.

§ 1525. A search-warrant cannot be issued but upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

§ 1526. The magistrate must, before issuing the warrant, examine on oath the complainant,

and any witnesses he may produce, and take their depositions in writing, and cause them to be subscribed by the parties making them.

Oath: See ante, sec. 1524.

§ 1527. The depositions must set forth the facts tending to establish the grounds of the application, or probable cause for believing that they exist.

§ 1528. If the magistrate is thereupon satisfied of the existence of the grounds of the application, or that there is probable cause to believe their existence, he must issue a search-warrant, signed by him with his name of office, to a peace officer in his county, commanding him forthwith to search the person or place named, for the property specified, and to bring it before the magistrate.

§ 1529. The warrant must be in substantially the following form:

"County of ———.

"The People of the State of California to any sheriff, constable, marshal, or policeman in the county of ———:

"Proof, by affidavit, having been this day made before me by (naming every person whose affidavit has been taken), that (stating the grounds of the application) according to section one thousand five hundred and twenty-five, or if the affidavit be not positive, that there is probable cause for believing that, (stating the ground of the application in the same manner), you are therefore commanded, in the day-time (or at any time of the day or night, as the case may be, according to section one thousand five hundred and thirty-three), to make immediate search on the person of C. D. (or in the house situated ———, (describing it or any other place to be searched, with reasonable particularity, as the case may be) for the

following property (describing it with reasonable particularity); and if you find the same or any part thereof, to bring it forthwith before me at (stating the place).

"Given under my hand, and dated this ——— day of ———, A. D. eighteen ———.

"E. F., Justice of the Peace" (or as the case may be).

§ 1530. A search-warrant may in all cases be served by any of the officers mentioned in its directions, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

§ 1531. The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

§ 1532. He may break open any outer or inner door or window of a house, for the purpose of liberating a person who, having entered to aid him in the execution of the warrant, is detained therein, or when necessary for his own liberation.

§ 1533. The magistrate must insert a direction in the warrant that it be served in the day-time, unless the affidavits are positive that the property is on the person or in the place to be searched, in which case he may insert a direction that it be served at any time of the day or night.

§ 1534. A search-warrant must be executed and returned to the magistrate who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

§ 1535. When the officer takes property under the warrant, he must give a receipt for the prop-

erty taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

§ 1536. When the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections one thousand four hundred and eight to one thousand four hundred and thirteen, inclusive. If it was taken on a warrant issued on the grounds stated in the second and third subdivisions of section one thousand five hundred and twenty-four, he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or of any other court in which the offense in respect to which the property taken is triable.

§ 1537. The officer must forthwith return the warrant to the magistrate, and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory, and taken before the magistrate at the time, to the following effect: "I, R. S., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

§ 1538. The magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken, and to the applicant for the warrant.

§ 1539. If the grounds on which the warrant was issued be controverted, he must proceed to

take testimony in relation thereto, and the testimony of each witness must be reduced to writing and authenticated in the manner prescribed in section eight hundred and sixty-nine.

§ 1540. If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

§ 1541. The magistrate must annex together the depositions, the search-warrant and return, and the inventory, and return them to the next term of the county court having power to inquire into the offenses in respect to which the search-warrant was issued, at or before its opening on the first day.

§ 1542. When a person charged with a felony is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the offense, the magistrate may direct him to be searched in his presence, and the weapon or other thing to be retained, subject to his order, or to the order of the court in which the defendant may be tried.

CHAPTER IV.

PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE..

- § 1547. Rewards for the apprehension of fugitives from justice.
- § 1548. Fugitives from another State, when to be delivered up.
- § 1549. Magistrate to issue warrant.
- § 1550. Proceedings for the arrest and commitment of the person charged.
- § 1551. When and for what time to be committed.
- § 1552. His admission to bail.
- § 1553. Magistrate must notify district attorney of the arrest.
- § 1554. Duty of the district attorney.
- § 1555. Person arrested, when to be discharged.
- § 1556. Magistrate to return his proceedings to Superior Court.
- § 1557. Fugitives from this State—accounts.
- § 1558. No fee to be paid to public officer procuring surrender.

§ 1547. The governor may offer a reward, not exceeding one thousand dollars, payable out of the general fund, for the apprehension—

1. Of any convict who has escaped from the State prison; or,
2. Of any person who has committed, or is charged with the commission of, an offense punishable with death.

Delivered, to whom.—Section 5278 of the revised statutes of the United States provides that after the demand, above referred to, has been made upon the executive of a state, it shall be his duty “to cause him,” the fugitive, “to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear.”

Evidence of the charge.—The evidence required, that a person whose delivery is demanded has been charged with the commission of a crime, is "a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person with having committed" the particular crime therein set forth. This copy must be "certified as authentic by the governor, or other chief magistrate, of the state or territory from whence the person so charged has fled": U. S. R. S., sec. 5278.

Act relating to offer of rewards: See post, Appendix, p. 16.

§ 1548. A person charged in any State of the United States with treason, felony, or other crime, who flees from justice and is found in this State, must, on demand of the executive authority of the State, from which he fled, be delivered up by the governor of this State, to be removed to the State having jurisdiction of the crime.

§ 1549. A magistrate may issue a warrant for the apprehension of a person so charged, who flees from justice and is found in this State.

§ 1550. The proceedings for the arrest and commitment of a person charged are, in all respects, similar to those provided in this Code for the arrest and commitment of a person charged with a public offense committed in this State, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State in which he is charged to have committed the offense, may be received as evidence before the magistrate.

§ 1551. If, from the examination, it appear that the accused has committed the crime alleged, the magistrate, by warrant reciting the accusation, must commit him to the proper custody

in his county, for such time, to be specified in the warrant, as the magistrate may deem reasonable, to enable the arrest of the fugitive under the warrant of the executive of this State, on the requisition of the executive authority of the State in which he committed the offense, unless he gives bail as provided in the next section, or until he is legally discharged.

§ 1552. The magistrate may admit the person arrested to bail by an undertaking with sufficient securities, and in such sum as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to arrest upon the warrant of the governor of this State.

§ 1553. Immediately upon the arrest of the person charged, the magistrate must give notice thereof to the district attorney of the county.

§ 1554. The district attorney must immediately thereafter give notice to the executive authority of the State, or to the prosecuting attorney or presiding judge of the court of the city or county within the State having jurisdiction of the offense, to the end that a demand may be made for the arrest and surrender of the person charged.

§ 1555. The person arrested must be discharged from custody or bail, unless, before the expiration of the time designated in the warrant or undertaking, he is arrested under the warrant of the governor of this State.

§ 1556. The magistrate must return his proceedings to the superior court of the county, which must thereupon inquire into the cause of the arrest and detention of the person charged, and if he is in custody, or the time of his arrest has not elapsed, it may discharge him from detention, or may order his undertaking of bail to be canceled, or may continue his detention for a

longer time, or readmit him to bail, to appear and surrender himself within a time specified in the undertaking. [Amendment approved April 12, 1880; Amendments 1880, p. 35. In effect April 12, 1880.]

§ 1557. When the governor of this State, in the exercise of the authority conferred by section two, article four, of the Constitution of the United States, or by the laws of this State, demands from the executive authority of any State of the United States, or of any foreign government, the surrender to the authorities of this State of a fugitive from justice, who has been found and arrested in such State or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the State treasury.

§ 1558. No compensation, fee, or reward of any kind can be paid to or received by a public officer of this State, or other person, for a service rendered in procuring from the governor the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to this State, or detaining him therein, except as provided for in such section.

CHAPTER V.

MISCELLANEOUS PROVISIONS RESPECTING SPECIAL PROCEEDINGS OF A CRIMINAL NATURE.

§ 1562. Parties to special proceedings, how designated.

§ 1563. Entitling affidavits.

§ 1564. Subpoenas.

§ 1562. The party prosecuting a special proceeding of a criminal nature is designated in this

Code as the complainant, and the adverse party as the defendant.

§ 1563. The provisions of section one thousand four hundred and one, in respect to entitling affidavits, are applicable to such proceedings.

§ 1564. The courts and magistrates before whom such proceedings are prosecuted, may issue subpoenas for witnesses, and punish their disobedience in the same manner as in a criminal action.

TITLE XIII.

PROCEEDINGS FOR BRINGING PERSONS IMPRISONED IN THE STATE PRISON, OR THE JAIL OF AN- OTHER COUNTY, BEFORE A COURT.

§ 1567. Persons imprisoned in another county, how brought before a court.

§ 1567. When it is necessary to have a person imprisoned in the State prison brought before any court, or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court, and executed by the sheriff of the county where it is made.

TITLE XIV.

DISPOSITION OF FINES AND FORFEITURES.

§ 1570. Fines and forfeitures, how disposed of.

§ 1570. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed, or the forfeiture incurred; and after such costs are paid, the residue must be paid to the county treasurer of the county in which the court is held. [Amendment approved March 30, 1874; Amendments 1873-4, p. 451. In effect July 1, 1874.]

PART III.

THE STATE PRISON AND COUNTY JAILS.

(§§ 1573-1614.)

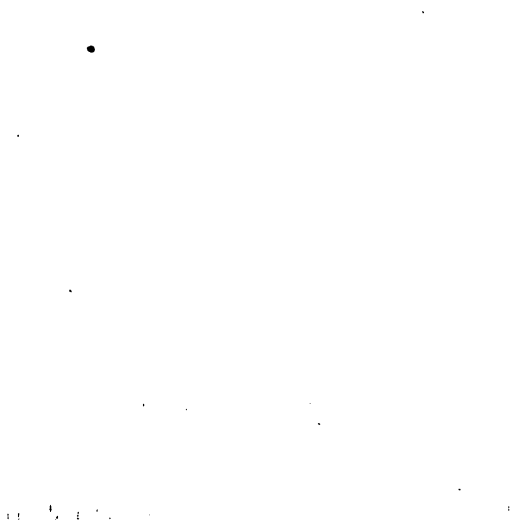


Fig. 1. Relationship between the number of fish (N) and the number of fish per square meter (n).

the number of fish per square meter (n) is:

$$n = \frac{N}{10} \quad (1)$$

where N is the number of fish and n is the number of fish per square meter.

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the number of fish per square meter (n) is:

$$n = \frac{10}{N} \quad (2)$$

where N is the number of fish and n is the number of fish per square meter.

The relationship between the number of fish (N) and the number of fish per square meter (n) is shown in Figure 1.

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TITLE I.

OF THE STATE PRISON AND THE DISCHARGE OF PRISONERS THEREFROM BEFORE THEIR TERM OF SERVICE EXPIRES.

Chapter I. Of the State Prison, §§ 1573-87.

II. Of the Discharge of Prisoners before the Expiration of their Term of Service, §§ 1590-5.

CHAPTER I.

OF THE STATE PRISON.

- § 1573. Under the charge and control of a board of directors.
- § 1574. President pro tem of Senate, when to act as director.
- § 1575. Compensation of directors.
- § 1576. Board must adopt rules and regulations.
- § 1577. Board may appoint warden and other officers.
- § 1578. Duties of clerk and other officers.
- § 1579. Monthly reports of officers.
- § 1580. Board must keep accounts and report to the governor.
- § 1581. Persons convicted of offenses against the United States.
- § 1582. Disposition of insane prisoners.
- § 1583. State prison fund.
- § 1584. State prison fund, how disbursed.
- § 1585. Board cannot contract debts.
- § 1586. Compensation for transportation of convicts.
- § 1587. Contract to be given at public letting.

§ 1573. The State prison is under the charge, control, and superintendence of a board of directors, consisting of a governor, lieutenant governor, and secretary of state.

States Prisons, acts relating to: See post, Appendix, pp. 650 et seq.

School of Industry at Ione, acts relating to: See post. Appendix, p. 611 et seq.

School of Reform at Whittier, acts relating to: See post, Appendix, p. 627 et seq.

§ 1574. In case of a vacancy in the office of lieutenant governor, the president pro tem. of the Senate may perform the duties and receive the compensation provided for the lieutenant governor.

§ 1575. The board of directors are to receive the sum of seventy-five dollars per month each, for expenses incurred by them; in addition to which the lieutenant governor is paid the sum of ten dollars per day for each day's services rendered in the performance of any duty at the prison.

§ 1576. The board must adopt rules and regulations for the discipline of prisoners and the government of the prison, which rules must be printed, and copies thereof furnished to every officer appointed by the board.

§ 1577. The board may appoint a warden, clerk, and such other officers as may be necessary for the management and safe-keeping of the prisoners.

§ 1578. The clerk must keep a record of the transactions of the board, and he and the warden and other officers appointed must perform such other duties as are required by the board, or the rules and regulations adopted thereby.

§ 1579. The warden and other officers appointed must make a monthly report to the board, which must contain a statement of business done and transactions had in their several departments.

§ 1580. The board must keep correct accounts of all funds received from proceeds of convict labor, and appropriate such funds to the maintenance of the convicts and to the payment of prison expenses, and must make a full report to the governor on the first Monday of each August next before the assembling of the Legislature, which report must contain a complete statement of the number and condition of the prisoners at the prison; the number and character of officers they have appointed, and the monthly pay received by each; the amount of expenses incurred, and for what; the amount and condition of personal property, belonging to the State, connected with the State prison; and the actual condition of the buildings and property.

§ 1581. The authorities of the State prison must receive into the prison any person convicted of an offense against the United States, and keep such person in solitary confinement or at hard labor, or in confinement with or without hard labor, as provided in the order of the court pronouncing sentence, until legally discharged, the United States supporting such convict, and paying the expenses of the execution of his sentence.

§ 1582. When the physician, warden, and captain of the yard of the State prison, after an examination, are of opinion that any prisoner is insane, they must certify the fact under oath to the governor, who may, in his discretion, order the removal of such prisoner to the insane asylum. As soon as the authorities of the asylum ascertain that such person is not insane, they must immediately notify the warden of that fact, and thereupon the warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired.

§ 1583. The moneys appropriated by the Legislature and the proceeds of the labor of prisoners constitute the State prison fund.

§ 1584. The moneys in the State prison fund are applicable to the payment of the expenses of the prison, and the salaries of the directors and officers thereof. The expenses and salaries must be audited and allowed by a board of examiners of State prison accounts, consisting of the attorney-general, treasurer, and controller; after which, upon the order of the board of directors, the controller must draw his warrant on the treasurer therefor, and the treasurer must pay the same out of such fund.

§ 1585. The board of directors cannot contract any debt or incur any liability binding upon the State.

§ 1586. Sheriffs delivering prisoners at the State prison must receive all expenses necessarily incurred in their transportation, and also a just and reasonable compensation for their own services, the amount of the expenses and compensation in each case to be audited and allowed by the board of examiners and paid out of any moneys in the State treasury appropriated for that purpose, and no further compensation shall be received by sheriffs for such transportation or services. [Amendment approved April 9, 1880; Amendments 1880, p. 31; repealed all conflicting acts. In effect April 9, 1880.]

Compensation of sheriffs conveying prisoners or insane: See post, Appendix, p. 654.

§ 1587. The board of directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other supplies for the prison, for any period of time not exceeding one year; and such contract shall be given to the lowest bidder, at a public letting there-

of, if the price bid is a fair and reasonable one, and not greater than the usual market value and price. Each bid shall be accompanied by a bond, in such penal sum as said board shall determine, with good and sufficient sureties, conditioned for the faithful performance of the terms of such contract. Notice of the time, place, and conditions of letting of each contract shall be given, for at least for consecutive weeks, in two daily newspapers in the cities of San Francisco and Sacramento; and also four insertions in a weekly paper published in the county in which the prison is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for proposals, and may so continue to renew the advertisement until satisfactory contracts may be had; and in the meantime the board may contract with anyone whose offer may be regarded just and proper; but no contract thus made shall be let to run more than sixty days, or shall in any case extend beyond the public letting. No bids shall be accepted and a contract entered into in pursuance thereof, when such bid is higher than any other bid made at the same letting for the same article, and where a contract can be had at such lower bid. When two or more bids for the same article are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the State, or may divide the contract between the bidders, as in their discretion may seem proper and right; provided, no contract shall be given, or purchase made, where either of the board, or any of the officers of the prison, is interested. All contracts or purchases made in violation of this section shall be void. [New section approved February 24, 1874: Amendments 1873-4, p. 467; in effect in 60 days.]

CHAPTER II.

OF THE DISCHARGE OF PRISONERS BEFORE THE EXPIRATION OF THEIR TERM OF SERVICE.

- § 1590. Credits for good behavior, how and when allowed.
- § 1591. Credits, when forfeited.
- § 1592. Board to make rules and regulations.
- § 1593. Board, when to report credits to Governor.
- § 1594. Further powers of the board.
- § 1595. Recommendations for pardon reported to Legislature.

§ 1590. The board of State prison directors of this State shall require of every able-bodied convict confined in said prison as many hours of faithful labor in each and every day during his term of imprisonment, as shall be prescribed by the rules and regulations of the prison, and every convict faithfully performing such labor, and being in all respects obedient to the rules and regulations of the prison, or if unable to work, yet faithful and obedient, shall be allowed from his term, instead and in lieu of the commutation heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term; provided, that any such convict who shall commit an assault upon his keeper, or any foreman, officer, or convict, or otherwise endanger life, or by any flagrant disregard of the rules of the prison, or any misdemeanor whatever, shall forfeit all deductions of time earned by him for good conduct before the commission of such offense; such forfeiture, however, shall only be made by the board of directors, after due proof of the offense, and notice to the offender; nor shall such forfeiture be imposed when a party has violated any rule or

rules without violence or evil intent, of which the directors shall be the sole judges. The name of no convict who attempts to escape, after the passage of this act, shall be sent by the State prison officials to the governor for the commutation herein provided; provided further, that of those prisoners entitled to their discharge at the date of the passage of this act, by virtue of the provisions hereof, not more than one shall be discharged on any one day, and the discharges shall be made in the order in which they would have occurred if this act had been passed, April, eighteen hundred and sixty-four. [Amendment approved March 29, 1878; Amendments 1877-78, p. 124. In effect April 15, 1878.]

§ 1591. The rule of commutation fixed in the preceding section is to be so applied as that any refusal to labor, a breach of the prison rules, or other misconduct, works a forfeiture of the credits of time thus earned, or such part of it as the warden or resident director may determine, subject to confirmation or rejection by the board of directors, on appeal by the prisoner. Unless the board, on appeal, at its first session thereafter, rejects the forfeiture, it is confirmed. Credits once forfeited cannot be restored except by the board, and then only when circumstances render such restoration urgently necessary. The above provisions apply to all persons now imprisoned in the State prison, and the commutation must be computed from April fourth, A. D. eighteen hundred and sixty-four.

§ 1592. The board may make such rules and regulations as may be necessary to carry into effect the provisions of this chapter, and may declare and establish a proper scale or rate of debits and credits for good conduct or misconduct,

which shall accompany the rules of discipline of the prison, and, in a book to be kept for that purpose, must cause to be entered up, at the end of each month, the result of credits to which each prisoner may be entitled, and on the first day of each month announce such result to the prisoners. Every contractor employing convict labor must keep a similar record of the conduct of all prisoners employed by him, and submit the same for inspection to the board at the end of each month, who must take the same into consideration in making up their decision.

§ 1593. At the end of every month the board must report to the governor of this State the names of all prisoners whose terms of imprisonment are about to expire by reason of the benefits of this chapter, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits to the date of such report, and the date when their service would expire by limitation of sentence. The governor, at the expiration of the term for which any prisoner has been sentenced, less the number of days allowed and credited to him, must order the release of such prisoner, by an order under his hand, addressed to the warden of the prison, in such mode and form as he may deem proper, and with or without restoration to citizenship, according to his discretion.

§ 1594. The board must grant and enter up in favor of such prisoners whom they may deem worthy, by reason of good conduct and industry, during the twelve months prior to the fourth day of April, A. D. eighteen hundred and sixty-four, the credits authorized by section fifteen hundred and ninety, not exceeding thirty days, the same to be deducted from the term of their imprisonment.

§ 1595. The board must report to the Legislature, at each regular session, the names of any persons confined in the State prison, who, in their judgment, ought to be pardoned and set at liberty on account of good conduct or unusual terms of sentence, or any other cause which, in their opinion, should entitle such prisoners to a pardon. Whenever the Legislature, by a majority of both houses, recommend to the governor that any or all of the persons reported be pardoned by him, he may thereupon pardon such prisoners.

Acts relating to State prisons. See post, Appendix, pp. 654 et seq.

School of industry, acts relating to. See post, Appendix, pp. 611 et seq.

School of reform, acts relating to. See post Appendix, pp. 627 et seq.

TITLE II.

OF COUNTY JAILS.

- § 1597. County jails, by whom kept and for what used.
- § 1598. Rooms required in county jails.
- § 1599. Prisoners to be classified.
- § 1600. Prisoners committed must be actually confined.
- § 1601. Sheriff to receive prisoners committed by courts.
- § 1302. Sheriff answerable for safe-keeping of such prisoners.
- § 1603. When jail of a contiguous county may be used.
- § 1604. Keeper of jail in contiguous county to receive prisoners.
- § 1605. When jail in contiguous county to cease to be used.
- § 1606. Prisoners to be returned to proper county.
- § 1607. Prisoners may be removed in case of fire.
- § 1608. Prisoners may be removed in case of pestilence.
- § 1609. Papers served on jailer for prisoner.
- § 1610. Guard for jail.
- § 1611. Sheriff to receive all persons duly committed.
- § 1612. Prisoners on civil process, when not to be received.
- § 1613. Prisoners may be required to labor.
- § 1614. Rules and regulations for the performance of labor.

§ 1597. The common jails in the several counties of this State are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.

2. For the detention of persons charged with crime and committed for trial.

3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.

4. For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

Acts relating to house of correction. See post Appendix, pp. 566 et seq.

School of industry at Ione, acts relating to. See post, Appendix, pp. 611 et seq.

School of reform at Whittier, acts relating to. See post, Appendix, pp. 627 et seq.

§ 1598. Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal process and detained for trial.
2. Persons already convicted of crime and held under sentence.
3. Persons detained as witnesses or held under civil process, or under an order imposing punishment for a contempt.
4. Males separately from females.

§ 1599. Persons committed on criminal process and detained for trial, persons convicted and under sentence, and persons committed upon civil process, must not be kept or put in the same room, nor shall male and female prisoners (except husband and wife) be kept or put in the same room.

§ 1600. A prisoner committed to the county jail for trial or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged, and if he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.

§ 1601. The sheriff must receive and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process

issued under the authority of this State; provision being made by the United States for the support of such prisoner.

§ 1602. A sheriff, to whose custody a prisoner is committed, as provided in the last section, is answerable for his safe-keeping in the courts of the United States, according to the laws thereof.

§ 1603. When there is no jail in the county, or when the jail becomes unfit or unsafe for the confinement of prisoners, the county judge may, by a written appointment filed with the county clerk, designate the jail of a contiguous county for the confinement of the prisoners of his county, or of any of them, and may at any time modify or annul the appointment.

§ 1604. A copy of the appointment, certified by the county clerk, must be served on the sheriff or keeper of the jail designated, who must receive into his jail all prisoners authorized to be confined therein, pursuant to the last section, and who is responsible for the safe-keeping of the persons so committed, in the same manner and to the same extent as if he was sheriff of the county for whose use his jail is designated, and with respect to the persons so committed he is deemed the sheriff of the county from which they were removed.

§ 1605. When a jail is erected in the county for the use of which the designation was made, or its jail is rendered fit and safe for the confinement of prisoners, the county judge of that county must, by a written revocation, filed with the county clerk thereof, declare that the necessity for the designation has ceased, and that it is revoked.

§ 1606. The county clerk must immediately serve a copy of the revocation upon the sheriff of the county, who must thereupon remove the prisoners to the jail of the county from which the removal was had.

§ 1607. When a county jail or a building contiguous to it is on fire, and there is reason to apprehend that the prisoners may be injured or endangered, the sheriff or jailer must remove them to a safe and convenient place, and there confine them as long as it may be necessary to avoid the danger.

§ 1608. When a pestilence or contagious disease breaks out in or near a jail, and the physician thereof certifies that it is liable to endanger the health of the prisoners, the county judge may, by a written appointment, designate a safe and convenient place in the county, or the jail in a contiguous county, as the place of their confinement. The appointment must be filed in the office of the county clerk, and authorize the sheriff to remove the prisoners to the place or jail designated, and there confine them until they can be safely returned to the jail from which they were taken.

§ 1609. A sheriff or jailer upon whom a paper in a judicial proceeding, directed to a prisoner in his custody, is served, must forthwith deliver it to the prisoner, with a note thereon of the time of its service. For a neglect to do so he is liable to the prisoner for all damages occasioned thereby.

§ 1610. The sheriff, when necessary, may, with the assent in writing of the county judge, or in a city, of the mayor thereof, employ a temporary

guard for the protection of the county jail, or for the safe keeping of prisoners, the expenses of which are a county charge.

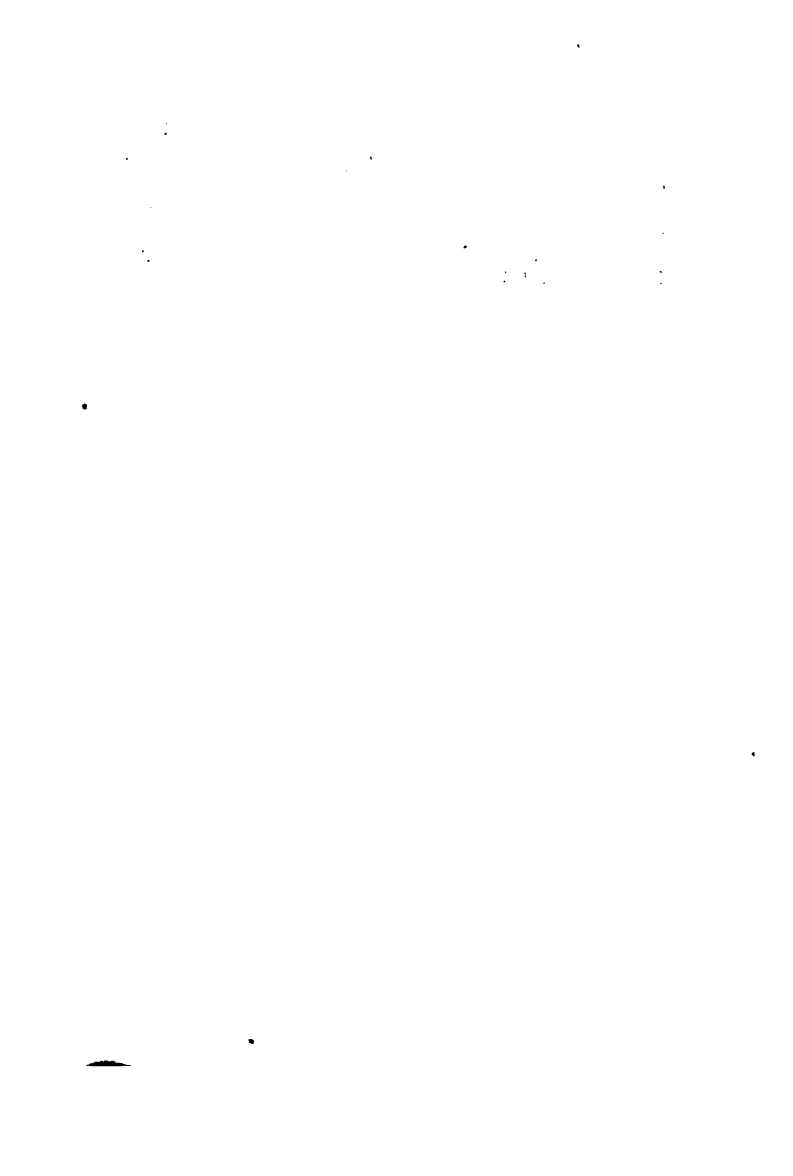
§ 1611. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of supervisors, and, except as provided in the next section, to be paid out of the county treasury.

§ 1612. Whenever a person is committed upon process in a civil action or proceeding, except when the people of this State are a party thereto, the sheriff is not bound to receive such person, unless security is given on the part of the party at whose instance the process is issued, by a deposit of money to meet the expenses for him of necessary food, clothing, and bedding, or to detain such person any longer than these expenses are provided for. This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court.

§ 1613. Persons confined in the county jail under a judgment of imprisonment rendered in a criminal action or proceeding, may be required by an order of the board of supervisors to perform labor on the public works or ways in the county.

§ 1614. The board of supervisors making such order may prescribe and enforce the rules and regulations under which such labor is to be performed, and provide clothing of such a distinctive character for said prisoners as such board, in its discretion, may deem proper. For each month in which the prisoner appears, by the record, to have given a cheerful and willing obedience to the rules

and regulations, and that his conduct is reported by the officer in charge of the jail to be positively good, five days shall, with the consent of the board of supervisors, be deducted from his term of sentence. [Amendment, approved March 23, 1893; Stats. 1893, p. 298.]



APPENDIX.

Penal Code.—42



APPENDIX.

ADULTERATION.

Butter and cheese: See post, 517; oleomargarine: See post, p. 587; olive oil: See post, 590.

An Act to punish and prohibit the sale of adulterated syrup.

Section. 1. Any person who shall knowingly sell, or keep, or offer for sale, or otherwise dispose of any syrup, or golden drips syrup, silver drips syrup, or molasses, containing muriatic or sulphuric acids, or glucose, or adulterated with any other substance to improve the color thereof, shall be guilty of a misdemeanor.

Sec. 2. Any person violating the provisions of section one of this act shall be punished, and imprisoned in the county jail of the county in which the offense was committed, for a period not exceeding six months or by a fine not exceeding five hundred dollars, or both. [In effect March 29, 1878. Stats. 1877-8, p. 695.]

An Act to prohibit the sophistication and adulteration of wine, and to prevent fraud in the manufacture and sale thereof.

[Approved March 7, 1887; 1887, 46.]

Defining pure wine.

Section 1. For the purposes of this act, pure wine shall be defined as follows: The juice of grapes fermented, preserved, or fortified for use as a beverage, or as a medicine, by methods rec-

ognized as legitimate according to the provisions of this act; unfermented grape-juice, containing no addition of distilled spirits, may be denominated according to popular custom and demand as wine only when described as "unfermented wine," and shall be deemed pure only when preserved for use as a beverage or medicine, in accordance with the provisions of this act. Pure grape-must shall be deemed to be the juice of grapes, only in its natural condition, whether expressed or mingled with the pure skins, seeds, or stems of grapes. Pure condensed grape-must shall be deemed to be pure grape-must from which water has been extracted by evaporation, for purposes of preservation or increase of saccharine strength. Dry wine is that produced by complete fermentation of saccharine contained in must. Sweet wine is that which contains more or less saccharine appreciable to the taste. Fortified wine is that wine to which distilled spirits have been added to increase alcoholic strength, for purposes of preservation only, and shall be held to be pure when the spirits so used are the product of the grape only. Pure champagne, or sparkling wine is that which contains carbonic acid gas or effervescence produced only by natural fermentation of saccharine matter of must, or partially fermented wine in bottle.

Prohibiting deleterious substitutes.

Sec. 2. In the fermentation, preservation, and fortification of pure wine, it shall be specifically understood that no materials shall be used intended as substitutes for grapes, or any part of grapes; no coloring matters shall be added which are not the pure product of grapes during fermentation, or by extraction from grapes with the aid of pure grape spirits; no foreign fruit juices, and no spirits imported from foreign countries whether pure or compounded with fruit juices or other ma-

terial not the pure product of grapes, shall be used for any purpose; no analine dyes, salicylic acid, glycerine, alum, or other chemical antiseptics or ingredients recognized as deleterious to the health of consumers, or as injurious to the reputation of wine as pure, shall be permitted; and no distilled spirits shall be added except for the sole purpose of preservation, and without the intention of enabling trade to lengthen the volume of fortified dry wine by the addition of water, or other wine weaker in alcoholic strength.

Prohibiting use of materials injurious to consumers, for promotion of fermentation.

Sec. 3. In the fermentation and preservation of pure wine, and during the operations of fining, or clarifying, removing defects, improving qualities, blending and maturing, no methods shall be employed which essentially conflict with the provisions of the preceding sections of this act, and no materials shall be used for the promotion of fermentation, or the assistance of any of the operations of wine treatment, which are injurious to the consumer or the reputation of wine as pure; provided, that it shall be expressly understood that the practices of using pure tannin in small quantities, leaven to excite fermentation only, and not to increase the material for the production of alcohol; water before or during, but not after, fermentation, for the purpose of decreasing the saccharine strength of musts to enable perfect fermentation; and the natural products of grapes in the pure forms as they exist in pure grape-musts, skins, and seeds; sulphur fumes to disinfect cooperage and prevent disease in wine; and pure gelatinous and albuminous substances, for the sole purpose of assisting fining, or clarification, shall be specifically permitted in the operations hereinbefore mentioned, in accordance with recognized legitimate custom.

Unlawful sale of impure wines.

Sec. 4. It shall be unlawful to sell, or expose, or offer to sell, under the name of wine, or grape-musts, or condensed musts, or under any names designating pure wines or pure musts, as herein-before classified and defined, or branded, labeled, or designated in any way as wine or musts, or by any name popularly and commercially used as a designation of wine produced from grapes, such as claret, burgundy, hock, sauterne, port, sherry, madeira, and angelica, any substance or compound, except pure wine, or pure grape-must or pure grape condensed must, as defined by this act, and produced in accordance with and subject to restrictions herein set forth; provided, that this act shall not apply to liquors imported from any foreign country, which are taxed upon entry by custom laws in accordance with a specific duty, and contained in original packages or vessels, and prominently branded, labeled, or marked, so as to be known to all persons as foreign products, excepting, however, when such liquor shall contain adulterations of artificial coloring matters, antiseptic chemicals, or other ingredients known to be deleterious to the health of consumers; and provided, further, that this act shall not apply to currant wine, gooseberry wine, or wines made from other fruits than the grape, which are labeled or branded and designated, and sold or offered or exposed for sale, under names, including the word "wine," but also expressing distinctly the fruit from which they are made, as gooseberry wine, elderberry wine, or the like. Any violation of any of the provisions of any of the preceding sections shall be a misdemeanor.

Excepting champagne and sparkling wine.

Sec. 5. Exceptions from the provisions of this act shall be made in the case of pure champagne, or sparkling wine, so far as to permit the use of

crystallized sugar in sweetening the same according to usual customs, but in no other respect.

Penalty.

Sec. 6. In all sales and contracts for sale, production, or delivery of products defined in this act, such products, in the absence of a written agreement to the contrary, shall be presumed to be pure, as herein defined, and such sale or contracts shall, in the absence of such an agreement, be void, if it be established that the products so sold or contracted for were not pure as herein defined; and in such case the concealment of the true character of such products shall constitute actual fraud for which damages may be recovered, and in a judgment for damages, reasonable attorney fees, to be fixed by the court, shall be taxed as costs.

Labels.

Sec. 7. The controller of the State shall cause to have engraved plates, from which shall be printed labels, which shall set forth that the wine covered by such labels is pure California wine, in accordance with this act, and leaving blanks for the name of the particular kind of wine and the name or names of the seller of the wine and place of business. These labels shall be of two forms or shapes, one a narrow strip to cap over the corks of bottles, the other a round or square and sufficiently large, say three inches square, to cover the bungs of packages in which wine is sold. Such labels shall be furnished upon proper application to actual residents, and to be used in this State only, and only to those who are known to be growers, manufacturers, traders, or handlers, or bottlers of California wine; and such parties will be required to file a sworn statement with said controller, setting forth that his or their written application for such labels is and will be for his or their sole use and benefit, and that he or they will not give, sell, or loan such label to any other

person or persons whomsoever. Such labels shall be paid for at the same rate and price as shall be found to be the actual cost price to the State, and shall be supplied from time to time as needed, upon the written application of such parties as are before mentioned. Such label, when affixed to bottle or wine package, shall be so affixed that by drawing the cork from bottle or opening the bung of package, such label shall be destroyed by such opening; and before affixing such labels, all blanks shall be filled out, by stating the variety or kind of wine that is contained in such bottle or package, and also by the name or names and post office address of such grower, manufacturer, trader, handler, or bottler of such wine.

Pure California wine.

Sec. 8. It is desired and required that all and every grower, manufacturer, trader, handler, or bottler of California wine, when selling or putting up for sale any California wine, or when shipping California wine to parties to whom sold, shall plainly stencil, brand, or have printed where it will be easily seen, first, "Pure California wine," and secondly his name, or the firm's name, as the case may be, both on label of bottle or package in which wine is sold or sent; or he may in lieu thereof, if he so prefers and elects, affix the label which has been provided for in section seven. It shall be unlawful to affix any such stamp or label as above provided to any vessel containing any substance other than pure wine as herein defined, or to prepare, or use on any vessel containing any liquid, any imitation or counterfeit of such stamp, or any paper in the similitude or resemblance thereof, or any paper of such form and appearance as to be calculated to mislead or deceive any unwary person, or cause him to suppose the contents of such vessel to be pure wine. It shall be unlawful for any person or persons, other than the

ones for whom such stamps were procured, to in any way use such stamps, or to have possession of the same. A violation of any of the provisions of this section shall be a misdemeanor, and punishable by fine of not less than fifty dollars and not more than five hundred dollars, or by imprisonment in the county jail for a term of not exceeding ninety days, or by both such fine and imprisonment. All moneys collected by virtue of prosecutions had against persons violating any provisions of this or any preceding sections shall go, one half to the informer, and one half to the district attorney prosecuting the same.

Controller to keep record of stamps.

Sec. 9. It shall be the duty of the controller to keep an account, in a book to be kept for that purpose, of all stamps, the number, design, time when and to whom furnished. The parties procuring the same are hereby required to return to the controller semi-annual statements under oath, setting forth the number used, and how many remains on hand. Any violation of this section by the person receiving such stamps is a misdemeanor.

Use and disposition of stamps.

Sec. 10. It shall be the duty of any and all persons receiving such stamps to use the same only in their business, in no manner or in no wise to allow the same to be disposed of except in the manner authorized by this act; to not allow the same to be used by any other person or persons. It shall be their duty to become satisfied that the wine contained in the barrels or bottles is all that said label imports as defined by this act. That they will use the said stamps only in this State, and shall not permit the same to part from their possession, except with the barrels, packages, or bottles upon which they are placed as provided by this act. A violation of any of the

provisions of this section is hereby made a felony.

Sec. 11. This act shall take effect and be in force ninety days after its passage.

An Act to provide against the adulteration of food and drugs.

Section 1. No person shall, within this State, manufacture for sale, offer for sale, or sell any drug or article of food which is adulterated within the meaning of this act.

Sec. 2. The term "drug," as used in this act, shall include all medicines for internal or external use, antiseptics, disinfectants, and cosmetics. The term "food," as used herein, shall include all articles used for food or drink by man, whether simple, mixed, or compound.

Sec. 3. Any article shall be deemed to be adulterated within the meaning of this act:

(a) In the case of drugs: (1) If, when sold under or by a name recognized in the United States pharmacopœia, it differs from the standard of strength, quality, or purity laid down therein. (2) If, when sold under or by a name not recognized in the United States pharmacopœia, but which is found in some other pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality, or purity laid down in such work. (3) If its strength, quality, or purity falls below the professed standard under which it is sold.

(b) In the case of food: (1) If any substance or substances have been mixed with it, so as to lower or depreciate, or injuriously affect its quality, strength, or purity. (2) If any inferior or cheaper substance or substances have been substituted wholly or in part for it. (3) If any valuable or necessary constituent or ingredient has been whol-

ly or in part abstracted from it. (4) If it is an imitation of, or is sold under the name of another article. (5) If it consists wholly, or in part, of a diseased, decomposed putrid, infected, tainted, or rotten animal or vegetable substance or article, whether manufactured or not; or in the case of milk, if it is the produce of a diseased animal. (6) If it is colored, coated, polished, or powdered whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is. (7) If it contains any added substance or ingredient which is poisonous or injurious to health. Provided, that the provisions of this act shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food, if each and every package sold or offered for sale be distinctly labeled as mixtures or compounds, with the name and per cent of each ingredient therein, and are not injurious to health.

Sec. 4. Every person manufacturing, exposing or offering for sale, or delivering to a purchaser, any drug or article of food included in the provisions of this act, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and shall tender him the value of the same, a sample sufficient for the analysis of any such drug or article of food which is in his possession.

Sec. 5. Whoever refuses to comply, upon demand, with the requirements of section four, and whoever violates any of the provisions of this act, shall be guilty of a misdemeanor, and shall be fined not exceeding one hundred nor less than twenty-five dollars, or imprisoned in the county jail not exceeding one hundred nor less than thirty days, or both. And any person found guilty of manufacturing, offering for sale, or selling, an adulterated article of food or drug under the pro-

visions of this act shall be adjudged to pay, in addition to the penalties hereinbefore provided for, all the necessary costs and expenses incurred in inspecting and analyzing such adulterated articles of which said person may have been found guilty of manufacturing, selling, or offering for sale.

Sec. 6. This act shall be in force and take effect from and after its passage. [Approved March 26, 1895. Stats. 1895, p. 71.]

An Act to prevent the sale of imitation or adulterated honey, and to provide a punishment therefor.

Section 1. Any person who, by himself or an agent, sells or offers for sale, or in any way disposes of, any substance or composition of the appearance of honey, or which in color, consistency, and taste resembles honey, but which is not honey—the natural product of the bee, or a pure extract therefrom—upon the representation or claim or pretense that the same is honey, or a pure extract therefrom, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of one hundred dollars, or by imprisonment in the county jail for three months, or by both such fine and imprisonment.

Sec. 2. For the purposes of this act "pure extract of honey" is honey extracted from the comb without the addition of any other substances.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 26, 1895. Stats. 1895, p. 94.]

An Act to prohibit the adulteration of honey, and to provide a punishment therefor.

Section 1. No person shall, within, this State, manufacture for sale, offer for sale, or sell any extracted honey which is adulterated by the admixture therewith of either refined or commercial glucose, or any other substance or substances, article or articles which may in any manner affect the purity of the honey.

Sec. 2. Every person manufacturing, exposing, or offering for sale or delivering to a purchaser any extracted honey, shall furnish to any person interested, or demanding the same, who shall apply to him for the purpose, and tender him the value of the same, a sample sufficient for the analysis of any such extracted honey which is in his possession.

Sec. 3. For the purposes of this act, "extracted honey" is the transformed nectar of flowers, which nectar is gathered by the bee from natural sources, and is extracted from the comb after it has been stored by the bee.

Sec. 4. Whoever violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five nor more than four hundred dollars, or imprisoned in the county jail not less than twenty-five days nor more than six months, or both such fine and imprisonment. And any person found guilty of manufacturing, offering for sale, or selling any adulterated honey under the provisions of this act may, in the discretion of the court, be adjudged to pay, in addition to the penalties hereinbefore provided for, all necessary costs and expenses, not to exceed fifty dollars, incurred in analyzing such adulterated honey of

which such person may have been found guilty of manufacturing, selling, or offering for sale.

Sec. 5. This act shall be in force and take effect from and after its passage. [Approved February 23, 1897.]

ADULTERY.

An act to punish adultery.

Section 1. Every person who lives in a state of open and notorious cohabitation and adultery is guilty of a misdemeanor, and is punishable by a fine not exceeding one thousand dollars, or imprisonment in the county jail not exceeding one year, or by both.

Sec. 2. If two persons, each being married to another, live together in a state of open and notorious cohabitation and adultery, each is guilty of a felony, and is punishable by imprisonment in the State prison not exceeding five years.

Sec. 3. A recorded certificate of marriage, or a certified copy thereof, there being no decree of divorce, proves the marriage of a person for the purpose of this act. [Approved March 15, 1872. Stats. 1871-2, p. 380.]

ANIMALS.

An Act for the more effectual prevention of cruelty to animals.

Section 1. Any three or more citizens of the State of California, who have heretofore, or who shall hereafter, incorporate as a body corporate,

under the general laws for incorporations in this State, for the purpose of preventing cruelty to animals, may avail themselves of the privileges of this act; provided, that the corporate body first formed as aforesaid in any county, shall be the only one so entitled to the benefits and privileges of this act in said county.

Sec. 2. The said societies may make and adopt by-laws governing the admission of associates and members, providing for all meetings, and for assistant and district or local officers; providing, also, for means and systems for the effectual attainment of the objects contemplated by this act; for the regulation and management of its business affairs, and for the effectual working of the societies; prescribing, also, the duties of all their officers; for the outlay of all moneys and the auditing all accounts; provided, that such by-laws shall not conflict with the laws of the State of California, or of the United States, or with any provisions of this act.

Sec. 3. Said societies shall elect officers and fill vacancies according to the provisions of their by-laws.

Sec. 4. All sheriffs, constables, police, and peace officers are empowered to make arrests for the violation of any of the provisions of this act, which by this act is denominated a misdemeanor, in the same manner as is by law provided for arrest in all cases of misdemeanors.

Sec. 5. All members and agents, and all officers of each or any of the societies so incorporated, as shall by the trustees of said societies be duly authorized in writing, approved by the county judge of the county, and sworn in the same manner as are constables and peace officers, shall have power to lawfully interfere to prevent the perpetration of any act of cruelty upon any dumb animal, and may use such force as may be necessary to pre-

vent the same, and to that end may summon to their aid any bystander; they may make arrests for the violation of any of the provisions of this act, in the same manner as is herein provided for other officers; and may carry the same weapons that such officers are authorized to carry; provided, that all such members and agents shall, when making such arrests, exhibit and expose a suitable badge to be adopted by said society. All persons resisting said specially appointed officers, as such, shall, upon conviction, be deemed guilty of a misdemeanor.

Sec. 6. Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates, or cruelly kills, or causes, or procures to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated, or cruelly killed, any animal; and whoever, having the charge or custody of any animal, either as owner or otherwise, inflicts unnecessary cruelty upon the same, or fails to provide the same with proper food, drink, shelter, or protection from the weather, or who cruelly drives the same when unfit for labor, shall, upon conviction, be deemed guilty of a misdemeanor.

Sec. 7. If any person shall carry, or cause to be carried, in or upon any vehicle, or otherwise, any domestic animal, in a cruel or inhuman manner, or knowingly and willfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall, upon conviction, be deemed guilty of a misdemeanor; and whenever any such person shall be taken into custody therefor by any officer, such officer may take charge of such vehicle and its contents, together with the horse or team attached to said vehicle, and deposit same in some safe place of custody;

and any necessary expenses which may be incurred for taking care of and keeping the same, shall be a lien thereon, to be paid before the same can be lawfully recovered; and if the said expenses, or any part thereof, remain unpaid, they may be recovered, by the person incurring the same, of the owner of said domestic animal, in any action therefor.

Sec. 8. Any person who shall cause any bull, bear, cock, dog, or other animal to fight, for his amusement or for gain, worry or injure each other; or any person who shall permit the same to be done on any premises under his charge or control; and any person who shall aid, abet, or be present at such fighting and worrying of such animal, as a spectator, shall, upon conviction, be deemed guilty of a misdemeanor.

Sec. 9. Whoever owns, possesses, keeps, or trains any bird or animal, with the intent that such bird or animal shall be engaged in an exhibition of fighting, or is present at any place, building, or tenement, where preparations are being made for an exhibition of the fighting of birds or animals, with the intent to be present at such exhibition, or is present at such exhibition, shall, upon conviction, be deemed guilty of a misdemeanor.

Sec. 10. When complaint is made, on oath, to any magistrate authorized to issue warrants in criminal cases, that the complainant believes that any of the provisions of law relating to or in any way affecting dumb animals, are being or are about to be violated in any particular building or place, such magistrate shall issue and deliver immediately a warrant directly to any sheriff, constable, police or peace officer, or officer of any incorporated association qualified, as provided in the fifth section of this act, authorizing him to enter and search such building or place, and to arrest any person or persons there present violating,

or attempting to violate, any law relating to or in any way affecting dumb animals, and to bring such person or persons before some court or magistrate of competent jurisdiction, within the city or township within which such offense has been committed, to be dealt with according to law, and such attempt shall be held to be a violation of section six of this act.

Sec. 11. Any sheriff, constable, police or peace officer, or officer qualified, as provided in section five of this act, may enter any place, building or tenement, where there is an exhibition of the fighting of birds or animals, or where preparations are being made for such an exhibition, and, without a warrant, arrest all persons there present.

Sec. 12. Any person who shall impound, or cause to be impounded in any pound any domestic animal, shall supply the same during such confinement with a sufficient quantity of good and wholesome food and water, and in default thereof, shall, upon conviction, be deemed guilty of a misdemeanor. In case any domestic animal shall be at any time impounded, as aforesaid, and shall continue to be without necessary food and water for more than twelve consecutive hours, it shall be lawful for any person, from time to time, as it shall be deemed necessary, to enter into and upon any pound in which any such domestic animal shall be confined, and supply it with necessary food and water so long as it shall remain so confined. Such person shall not be liable to any action for such entry, and the reasonable cost of such food and water may be collected by him of the owner of such animal, and the said animal shall not be exempt from levy and sale upon execution issued upon a judgment therefor.

Sec. 13. Every owner, driver, or possessor of any old, maimed, or diseased horse, mule, cow, or

other domestic animal, who shall permit the same to go loose in any lane, street, square, or lot, of any city or township, without proper care and attention, for more than three hours after knowledge thereof, shall, on conviction, be deemed guilty of a misdemeanor; provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care. Every sick, disabled, infirm, or crippled horse, ox, mule, cow, or other domestic animal, which shall be abandoned on the public highway, or in any open space in any city or township, may, if after due search by a peace officer, or officer of said society, no owner can be found therefor, be killed by such officer; and it shall be the duty of all peace and public officers to cause the same to be killed on information of such abandonment.

Sec. 14. Every person convicted of any misdemeanor under this act, shall be punished as is by law provided for the punishment of misdemeanors; and all fines imposed or collected in any county, under the provisions of this act, shall inure to the society in said county, organized and incorporated as herein provided, in aid of the benevolent object for which it is incorporated.

Sec. 15. All prosecutions for the violation of any of the provisions of this act shall be conducted and prosecuted in a court of competent jurisdiction, and any member of said society authorized, as provided in section five of this act, may appear and prosecute in any of said courts, for any violation of any of the provisions of this act, whether or not he be an attorney or counselor at law; provided, that all such prosecutions shall be conducted in the name of the people of the state of California.

Sec. 16. In this act the singular shall include the plural; the word "animal" shall be held to include every living dumb creature; the words "torture," "torment," and "cruelty," shall be held to include every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted, and the words "owner" and "person" shall be held to include corporations as well as individuals; and the knowledge and acts of agents of and persons employed by corporations, in regard to animals transported, owned, or employed by, or in the custody of such corporations, shall be held to be the act and knowledge of such corporations as well as such agent or employees.

Sec. 17. No part of this act shall be deemed to interfere with any of the laws of this state known as the "game laws," or any laws for the destruction of certain birds; nor shall this act be deemed to interfere with the right to destroy any venomous reptiles, or any animal known as dangerous to life, limb, or property, or to interfere with the right to kill all animals used for food, or with any properly conducted scientific experiments or investigations, which experiments or investigations shall be performed only under the authority of the faculty of some regularly incorporated medical college or university of the state of California.

Sec. 18. The act entitled "an act for the more effectual prevention of cruelty to animals," approved March thirtieth, eighteen hundred and sixty-eight, and amendments thereto, approved March fifteenth, eighteen hundred and seventy-two, are hereby repealed. [In effect March 20, 1874. Stats. 1873-4, 499.]

An Act to prevent the spread of contagious or infectious diseases among domestic animals.

Section 1. Any person or persons, company or corporation, owning or having possession or control of any animal affected by any contagious or infectious disease, who shall fail to keep the same within an inclosure, or herd the same in some place where they will be secure from contact with other animals of like kind not so affected, or who shall suffer such infected animals to be driven on the public highway or to range where they will be likely to come in contact with other animals not so affected, shall be guilty of a misdemeanor, and, on conviction, punished by a fine of not more than five hundred dollars for each offense.

Sec. 2. This act shall take effect immediately.
[Approved March 23, 1893; Stats. 1893, 302.]

ARTESIAN WELLS.

An Act to regulate the use of artesian wells, and to prevent the waste of subterranean waters in this State.

Section 1. Any artesian well which is not capped, or furnished with such mechanical appliance as will readily and effectively arrest and prevent the flow of water from such well, is hereby declared to be a public nuisance. The owner, tenant, or occupant of the land upon which such well is situated, who causes, permits, or suffers such public nuisance, or suffers or permits it to remain or continue, is guilty of a misdemeanor.

Sec. 2. Any person owning, possessing, or occupying any land upon which is situated an artesian well, who causes, suffers, or permits the water to unnecessarily flow from such well, or to go to waste, is guilty of a misdemeanor.

Sec. 3. An artesian well is defined, for the purposes of this act, to be any artificial well the waters of which will flow continuously over the natural surface of the ground adjacent to such well at any season of the year.

Sec. 4. Waste is defined, for the purposes of this act, to be the causing, suffering, or permitting the waters flowing from such well to run into any river, creek, or other natural watercourse or channel, or into any bay, lake, or pond, or into any street, road, highway, or upon the land of any person other than that of the owner of such well, or upon public lands of the United States or of the State of California, unless it be used thereon for the purposes and in the manner that it may be lawfully used upon the land of the owner of such well; provided, that this section shall not be so construed as to prevent the use of such waters for the proper irrigation of trees standing along or upon any street, road, or highway, or for ornamental ponds or fountains, or the propagation of fish.

Sec. 5. Any person violating any of the provisions of this act may be proceeded against for a misdemeanor in any justice's court of the county in which such well is located, and shall, upon conviction, be fined for each offense not less than ten or more than fifty dollars. There shall, also, upon conviction had, in addition to such fine, be taxed against such party the cost of prosecution. Such fine and costs may be collected as in other criminal cases, and the justice may also issue an execution upon the judgment therein rendered, and

the same may be enforced and collected as in civil cases.

Sec. 6. It shall be the duty of the supervisors or roadmasters, on complaint of any citizen within their respective districts, and for that purpose may at all proper times enter upon the premises where such well is situated; and it shall be his duty to institute, or cause to be instituted, criminal action for all violations of the provisions of this act, or for all public offenses defined in this act, committed within such district.

Sec. 7. An act entitled "an act to regulate the use of artesian wells, and to prevent the waste of subterranean waters in Santa Clara and Los Angeles counties," approved March eighteenth, eighteen hundred and seventy-six, and all other acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Sec.[8.] This act shall not apply to artesian wells in the county of San Bernardino. [Approved March 9, 1878. In effect July 1, 1878. Stats. 1877-8, 195.]

BUOYS AND BEACONS.

An Act for the protection of buoys and beacons.

Section 1. Any person or persons who shall moor any vessel or boat of any kind, or any raft or scow, to any buoy or beacon placed in the waters of California by authority of the United States Lighthouse Board, or shall in any manner hang on to the same, with any vessel, boat, raft, or scow, or shall willfully remove, damage, or destroy any such buoy or beacon, or any part of the same, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in this state

by the authority aforesaid, shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months; one-third of the fine in such case to be paid to the informer, and two-thirds thereof to the Lighthouse Board, to be used in repairing said buoys and beacons.

Sec. 2. The cost of repairing or replacing any such buoy or beacon which may have been misplaced, damaged, or destroyed by any vessel, boat, raft, or scow being made fast to the same, shall, when said cost shall have been legally ascertained, be a lien upon such vessel, boat, raft, or scow, and recovered against the same, and the owner or owners thereof, in any action of debt, in any court of competent jurisdiction in this state. [In effect March 26, 1874. Stats, 1873-4, 619.]

BUTTER.

Act to prevent sale of oleomargarine as butter, see post, title Oleomargarine.

An Act entitled an act to prevent the sale of short-weight rolls of butter.

Any person or persons, firm or corporation, who offers for sale roll butter not of full weight to each roll, shall be guilty of a misdemeanor.

This act shall go into effect sixty days after its passage. [Approved March 11, 1893; Stats. 1893, 151.]

An Act to prevent deception in the manufacture and sale of butter and cheese, to secure its enforcement, and to appropriate money therefor.

Section 1. That for the purposes of this Act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of butter, and designed to be used as a substitute for butter made from pure milk or cream from the same, is hereby declared to be imitation butter; and that for the purposes of this Act, every article, substance, or compound, other than that produced from pure milk or cream from the same, made in the semblance of cheese, and designated to be used as substitute for cheese made from pure milk or cream from the same, is hereby declared to be imitation cheese; provided, that the use of salt, rennet, and harmless coloring matter for coloring the product of pure milk or cream, shall not be construed to render such product an imitation; and provided, that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

Sec. 2. No person, by himself or his agents or servants, shall render or manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell, or use, or serve to patrons, guests, boarders, or inmates, in any hotel, eating-house, restaurant, public conveyance or boarding-house, or public or private hospital, asylum, or eleemosynary or penal institution, any article, product, or compound made wholly or partly out of any fat, oil, or oleaginous substance or compound thereof, not produced directly and at the time of manufacture from unadulterated milk or

cream from the same, which article, product, or compound shall be colored in imitation of butter or cheese produced from unadulterated milk or cream from the same; provided, that nothing in this section shall be construed to prohibit the manufacture or sale, under the regulations hereinafter provided, of substances or compounds, designed to be used as an imitation, or as a substitute for butter or cheese made from pure milk or cream from the same, in a separate and distinct form, and in such a manner as will advise the consumer of its real character, free from coloration, or ingredients, that causes it to look like butter or cheese made from pure milk or cream, the product of the dairy.

Sec. 3. Each person who, by himself or another, lawfully manufactures any substance designed to be used as a substitute for butter or cheese, shall mark by branding, stamping, or stenciling upon the top and sides of each tub, firkin, box, or other package in which such article shall be kept, and in which it shall be removed from the place where it is produced, in a clear and durable manner, in the English language, the words "substitute for butter," or "substitute for cheese," as the case may be, in printed letters in plain Roman type, each of which shall not be less than one inch in height by one-half inch in width, and in addition to the above shall prepare a statement, printed in plain Roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer, the name of the place where manufactured or put up, and also the names and actual percentages of the various ingredients used in the manufacture of such imitation butter or imitation cheese; and shall place a copy of said statement within and upon the con-

tents of each tub, firkin, box, or other package, and next to that portion of each tub, firkin, box, or other package as is commonly and most conveniently opened; and shall label the top and sides of each tub, firkin, box, or other package by affixing thereto a copy of said statement, in such manner, however, as not to cover the whole or any part of said mark of "substitute for butter," or "substitute for cheese."

Sec. 4. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any substance designed to be used as a substitute for butter or cheese, unless the same be marked and contain a copy of the statement, and be labeled as provided by section three of this Act; and no carrier shall knowingly receive the same for the purpose of forwarding or transporting, unless it shall be manufactured, marked, and labeled as hereinbefore provided, consigned, and by the carrier receipted for by its true name; provided, that this Act shall not apply to any goods in transit between foreign States and across the State of California.

Sec. 5. No person, or his agent, shall knowingly have in his possession or under his control any substance designed to be used as a substitute for butter and cheese unless the tub, firkin, box, or other package containing the same, shall be clearly and durably marked and contain a copy of the statement and be labeled as provided by section three of this Act; and if the tub, firkin, box, or other package be opened, then a copy of the statement described in section three of this Act shall be kept, with its face up, upon the exposed contents of said tub, firkin, box, or other package; provided, that this section shall not be deemed to apply to persons who have the same in their pos-

session for the actual consumption of themselves or family.

Sec. 6. No person, by himself or another, shall sell, or offer for sale, or take orders for the future delivery of, any substance designed to be used as a substitute for butter or cheese, under the name of or under the pretense that the same is butter or cheese; and no person, by himself or another, shall sell any substance designed to be used as a substitute for butter or cheese, unless he shall inform the purchaser distinctly, at the time of the sale, that the same is a substitute for butter or cheese, as the case may be, and shall deliver to the purchaser, at the time of the sale, a separate and distinct copy of the statement described in section three of this Act; and no person shall use in any way, in connection or association with the sale, or exposure for sale, or advertisement, of any substance designed to be used as a substitute for butter or cheese, the words "butterine," "creamery," or "dairy," or the representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols, or combinations thereof, commonly used by the dairy industry in the sale of butter or cheese.

Sec. 7. No keeper or proprietor of any bakery, hotel, boarding-house, restaurant, saloon, lunch counter, or other place of public entertainment, or any person having charge thereof, or employed thereat, or any person furnishing board for others than members of his own family, or for any employee where such board is furnished as the compensation or as a part of the compensation of any such employee, shall place before any patron or employee, for use as food any substance, designed to be used as a substitute for butter and cheese, unless the same be accompanied by a

copy of the statement described in section three of this Act, and by a verbal notification to said patron that such substance is a substitute for butter or cheese.

Sec. 8. No action can be maintained on account of any sale or other contract made in violation of, or with intent to violate, this Act by or through any person who was knowingly a party to such wrongful sale or other contract.

Sec. 9. Every person having possession or control of any substance designed to be used as a substitute for butter or cheese which is not marked as required by the provisions of this Act, shall be presumed to have known, during the time of such possession or control, that the same was imitation butter, or imitation cheese, as the case may be.

Sec. 10. No person shall efface, erase, cancel, or remove any mark, statement, or label provided for by this Act, with intent to mislead, deceive, or to violate any of the provisions of this Act.

Sec. 11. No butter or cheese not made wholly from pure milk or cream, salt, harmless coloring matter, shall be used in any of the charitable or penal institutions that receive assistance from the State.

Sec. 12. Whoever shall violate any of the provisions or sections of this Act shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished, for the first offense, by a fine of not less than fifty dollars, nor more than one hundred and fifty dollars, or by imprisonment in the county jail for not exceeding thirty days; and for each subsequent offense, by a fine of not less than one hundred and fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not less than thirty days, nor more than six months, or by both such fine

and imprisonment, in the discretion of the court. One-half of all the fines collected under the provisions of this Act shall be paid to the person or persons furnishing information upon which conviction is procured.

Sec. 13. Whoever shall have possession or control of any imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, contrary to the provisions of this Act, shall be construed to have possession of property with intent to use it as a means of committing a public offense, within the meaning of chapter three, of title twelve, of part two, of an Act to establish a Penal Code; provided, that it shall be the duty of the officer who serves a search warrant issued for imitation butter or imitation cheese, or any substance designed to be used as a substitute for butter or cheese, to deliver to the agent of the Dairy Bureau, or to any person by such Dairy Bureau authorized in writing to receive the same, a perfect sample of each article seized by virtue of such warrant, for the purpose of having the same analyzed, and forthwith to return to the person from whom it was taken the remainder of each article seized as aforesaid. If any sample be found to be imitation butter or imitation cheese, or substance designed to be used as a substitute for butter or cheese, it shall be returned to and retained by the magistrate as and for the purpose contemplated by section fifteen hundred and thirty-six of an Act to establish a Penal Code; but if any sample be found not to be imitation butter or imitation cheese, or a substance designed to be used as a substitute for butter or cheese, it shall be returned forthwith to the person from whom it was taken.

Sec. 14. It shall be the duty of the District Attorney, upon the application of the Dairy Bureau,

to attend to the prosecution, in the name of the State, of any suit brought for the violation of any of the provisions of this Act within his district.

Sec. 15. The Governor shall on or before the first day of July, eighteen hundred and ninety-seven, appoint three resident citizens of this State, who shall have practical experience in the manufacture of dairy products, to constitute a State Dairy Bureau, and which shall succeed the one now in existence in every respect. Members of this bureau shall hold office for the period of four years from and after the first day of July, eighteen hundred and ninety-seven, and until their successors are appointed and qualified; provided, that the first members appointed under the provisions of this Act shall at their first meeting so classify themselves by lot as that one shall go out of office at the expiration of two years, one at the expiration of three years, and the other at the expiration of four years.

Any vacancy shall be filled by appointment by the Governor for the unexpired term.

The members of said bureau shall serve without compensation, and within twenty days after their appointment, shall take the oath of office as required by the Constitution, and they shall thereupon meet and organize by electing a chairman and treasurer. Any one of them may be removed by the Governor, for neglect or violation of duty.

They shall make a report in detail to the Legislature not later than the first day of December next preceding the meetings thereof.

Sec. 16. It shall be the duty of the State Dairy Bureau to secure, as far as possible, the enforcement of this Act. The State Dairy Bureau shall have power to employ an agent at a salary of twelve hundred dollars a year, and such assistants or chemists, as from time to time may be necessary therefor.

Sec. 17. There is hereby appropriated for the use of this State Dairy Bureau, out of any money in the state treasury not otherwise appropriated, the sum of five thousand dollars for each fiscal year hereafter, and commencing with the forty-ninth fiscal year; all salaries, fees, costs, and expenses of every kind incurred in the carrying out of the law shall be drawn from the sum so appropriated, and the State Controller shall draw his warrant on the State Treasurer in favor of the person entitled to the same.

Sec. 18. All Acts and parts of Acts inconsistent with this Act are hereby repealed.

Sec. 19. This Act shall take effect immediately. [Approved March 4, 1897.]

For the prior acts on this subject see Stats. 1895, p. 41 and Stats. 1881, p. 14.

Act to prevent sale of oleomargarine as butter see post.

CONVICTS.

An Act providing for the furnishing to Sheriffs and Chiefs of Police of certain information, descriptions, and photographs of convicts about to be discharged, by the wardens of state prisons.

Section 1. Within thirty days prior to the expiration of the sentence of any convict confined in any state prison of this State the warden of such state prison shall forward to each Sheriff and Chief of Police of this State a photograph of such convict, together with a minute description of his person and marks of identification, together with a statement of the nature of the crime he is imprisoned for.

Sec. 2. Section one of this Act shall be construed so as to apply only to convicts who have served a prior term or terms in a state prison or house of correction.

Sec. 3. Any expenditure incurred in carrying out the provisions of this Act shall be paid for out of the appropriation made for the support of state's prisons.

Sec. 4. This Act shall take effect immediately and be in force from and after its passage. [Stat. approved March 27, 1897; Stats. 1897, chap. CLVIII.]

CORONERS.

Act relating to costs of coroner's inquest in state prison: See post, title Costs.

An Act providing in counties of the first class for the appointment by the Coroner of a competent physician for the performance of autopsies upon the bodies of deceased persons when inquests are held, and fixing the compensation therefor.

Section 1. In counties of the first class, the Coroner shall appoint a competent physician, whose duties it shall be to perform autopsies upon the bodies of all deceased persons when inquests are held. Such physician shall, after the performance of such autopsy, certify in writing his professional opinion as to the cause of death, which certificate shall be filed with said Coroner.

Sec. 2. The physician so appointed shall receive as compensation for his said services the sum of twenty-four hundred dollars per annum, which shall be paid out of the general fund of the coun-

ty in monthly installments of two hundred dollars, at the same time and in the same manner as county officers are paid.

Sec. 3. This Act shall take effect and be in force from and after its passage. [Approved March 14, 1895; Stats. 1895, p. 52.]

An Act to provide an official stenographic reporter to the Coroner of each county, or city and county, having one hundred thousand or more inhabitants, and providing the mode in which such reporter shall be appointed, and establishing the compensation and prescribing the duties of such reporter.

Section 1. It shall be lawful for the Coroner of every county, or city and county, of this State, having one hundred thousand or more inhabitants, to select and appoint an official stenographic reporter, such reporter to hold office during the pleasure of the Coroner making the appointment.

Sec. 2. The said official reporter shall be allowed and shall receive compensation as follows: One hundred and fifty dollars per month.

Sec. 3. It shall be the duty of said reporter to attend all inquests held by the Coroner of the said county, or city and county, and report in shorthand all testimony of witnesses, and all the proceedings of said inquests, and to transcribe the same into legible longhand and furnish two typewritten copies thereof, and shall certify the same, and file one of the copies with the said Coroner and the other copy with the Clerk of the said county, or city and county. He shall also, within a reasonable time after such testimony is taken, file with the said Clerk the shorthand notes taken by him at each inquest.

Sec. 4. The said official reporter shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office.

Sec. 5. Any report of the said official reporter duly appointed and sworn, when written out in longhand writing and certified by him as being a correct transcript of the testimony and proceedings in the case, shall be prima facie a correct statement of such testimony and proceedings.

Sec. 6. The salary of said reporter shall be audited and paid monthly out of the General Fund of the said county, or city and county.

Sec. 7. This Act shall take effect from and after its passage. [Approved March 26, 1895; Stats. 1895, 168.]

An Act concerning the attendance of physicians and surgeons in certain cases, and to provide payment for making chemical and post-mortem examinations.

Coroner may summon physician, surgeon, or chemist.

Section 1. The coroner or other officer holding an inquest upon the body of a deceased person may summon a physician or surgeon to inspect the body, or a chemist to make an analysis of the contents of the stomach, or the tissues of the body of the deceased, and to give a professional opinion as to the cause of the death.

Compensation.

Sec. 2. Any physician, surgeon, or chemist professionally attending as a witness on an inquest, or upon a trial of any person charged with murder or manslaughter, or in cases de lunatico inquirendo, as above provided, shall be allowed a reasonable compensation for such attendance or examination

by the board of supervisors, upon the written certificate of the court or officer requiring such services as to the extent and supposed value of the same; provided, that such certificate shall not be conclusive as to the amount of compensation. [Approved February 8, 1872; 1871-2, 81.]

An Act in relation to coroners in the city and county of San Francisco.

Official oath and bond.

Section 1. Every person elected or appointed to the office of coroner, before he shall enter upon the duties of such office, shall take the constitutional oath of office, and give an official bond in the sum of five hundred dollars.

Coroner's duties.

Sec. 2. The duties of coroner shall be, first, to hold inquests upon the bodies of persons slain, or who shall have committed suicide, or been found dead under such circumstances as to lead to a suspicion of crime committed within the county in which such coroner resides; second, to issue process for the arrest of one charged upon inquest with murder or manslaughter; to hold inquest on the body of every prisoner who dies in jail; and it shall be the duty of the jailer, whenever a prisoner dies in his custody, to send for the coroner who has jurisdiction, who shall hold inquest upon the body of such prisoner. The duties of coroners upon inquests shall not be delegated.

Notice of death.

Sec. 3. Whenever any coroner shall receive notice that any person has been slain, or has committed suicide, or has died suddenly, or has been

found dead under circumstances such as to require an inquisition, it shall be his duty to go to the place where such person shall be, or if the body shall have been interred, shall cause it to be disinterred, and shall forthwith summon not less than nine or more than fifteen persons to serve as jurors, to appear before him forthwith at such place as he shall appoint, and make inquisition concerning such death. He shall summon none but persons duly qualified by law to serve as jurors, and no such person shall be exempt except at the discretion of the coroner. No person shall be summoned who is related to the deceased, or to any person who may be suspected or charged with the killing; nor shall any one be summoned who is known to be prejudiced for or against him, but the jurors who are selected and appear shall not be challenged by any party. [Amendment approved March 23, 1876; 1875-6, 397. Took effect from passage.]

Forfeiture.

Sec. 4. Every person summoned as a juror who shall fail to appear without having a reasonable excuse, shall forfeit a sum not exceeding the sum of two hundred dollars, to be recovered by the coroner, in the name of the people of the state, before any justice of the peace in the proper township, and when collected to be paid into the county treasury for the use of the county.

Swearing jury.

Sec. 5. When six or more of the jurors attend they shall be sworn by the coroner and charged by him to inquire how and in what manner, and when and where, such person came to his death, and who such person was, and into all the circumstances attending such death, and to make a true inquisition according to the evidence offered to them or arising from the inspection of the body.

Inquest.

Sec. 6. There shall be but one inquest upon a body, unless that taken be set aside by the court; and there shall be but one inquest held upon several bodies of persons who were killed by the same cause and who died at the same time. When ever it shall appear that an error in the identity of the body has been made by the jury, it shall be discretionary with the coroner to call another inquest upon the body without reference to the court, and a memorandum of the error shall be entered upon the erroneous inquisition.

To view the body.

Sec. 7. After the jury have been sworn and charged by the coroner, they shall go together with the coroner to view and examine the body of the deceased person. They shall not proceed upon the inquest until they have so viewed the body. After the jury have viewed the body, they may retire to any convenient place to hear the testimony of witnesses and deliberate upon their verdict. For this end the coroner may adjourn the inquest from time to time, as may be necessary.

Issue subpoena.

Sec. 8. The coroner may issue subpoenas for witnesses, returnable forthwith, or at such time and place as he may appoint therein, which may be served by any competent person, by reading the same to the witness, or informing him or her of the contents thereof, and such witness shall not be entitled to any fee for attendance. Every person served with such subpoena shall be liable to the same penalties for disobedience thereto, and his attendance may be enforced in like manner as in case of subpoenas issued by a justice of the peace.

Witnesses.

Sec. 9. The coroner shall summon and examine

as witnesses every person who, in his opinion or that of the jury, has any knowledge of the facts, and he may summon a surgeon or physician to inspect the body and to give a professional opinion as to the cause of death; and if it shall be necessary, the coroner may cause a post-mortem examination or chemical analysis to be made, and the expense of such examination or analysis shall be a county charge, to be fixed by the board of supervisors.

Verdict.

Sec. 10. Witnesses produced shall be sworn by the coroner, and the whole of the testimony shall be reduced to writing by the coroner, or under his direction, and signed by the witnesses in the presence of the jury, and each deposition shall have a jurat attached. The jury, after hearing all the testimony offered before them, shall retire as jurors in other cases and deliberate upon their verdict, suffering no one, not even the coroner to mingle with them in their deliberations; but they may, as in the case of jurors in the courts of law, take the opinion of the coroner upon any question of law that may arise upon the investigation.

District attorney.

Sec. 11. The coroner may call upon the district attorney to assist him in the examination of witnesses, and the jurors may put any proper question to the witness, but the party suspected or charged with the crime shall have no right to produce witnesses on the inquest, or to cross-examine those produced on behalf of the people by himself or counsel; nor shall it be necessary that he be present during the examination. But it shall be the duty of the coroner to examine any witness whom he may have reason to believe may know anything concerning the matter pertinent to the inquiry, and to put to any witness any proper and pertinent question that such person may desire,

Such party suspected or charged, however, may be attended by counsel on the inquest to advise with him as to his rights in answering any question that may be put to him when under examination. If the party accused of the crime be present at the inquest, and is then charged with the crime, or the testimony tends to criminate him and he is called upon by the coroner to testify, it is the duty of the coroner first to inform the accused that he is at liberty to refuse to answer any question that he may put to him, otherwise his answer on such examination cannot be read in evidence against him when on trial for the offense. But if such person is not under arrest or charged with the crime,, his answer may be given in evidence against him on his subsequent trial for the crime charged, though the coroner may not have so advised him of his rights. The jury must hear all the evidence offered before them, whether it be in favor of or against any party suspected of the killing.

Investigation not limited.

Sec. 12. Upon the investigation the coroner's jury shall not be limited in their inquiry like a jury upon the trial of one charged with the crime; their duties shall be to determine if a crime has or has not been committed; and if a crime has been committed, who perpetrated or caused the same to be perpetrated, and all the circumstances attending it; and any proper testimony tending in any degree to throw light upon the subject may be properly given. Matters of opinion, except of professional witnesses, or hearsay evidence, shall not be permitted.

Written verdict.

Sec. 13. When the jury shall have agreed upon a verdict they shall reduce their inquisition to writing, which writing shall show before what coroner the same was taken, and that the same

was taken upon the oath of good and lawful men of the county, who were first duly sworn; and it must also show by whom and when the same was executed. They shall also find and certify who or in what manner and when and where the person so dead came to his death, and all the circumstances attending such death; and if a crime has been committed in the case, who were guilty thereof, either as principal or accessory, and in what manner. The jury shall not be required to find who were accessaries after the fact—only those before the fact. If the person who is found dead is unknown, or the person who caused the death is unknown, the jury shall so find; and they shall find, if the fact so appears before them, whether the killing was accidental or suicide, murder or manslaughter, excusable or justifiable homicide; and if the manner of the death is unknown, they shall so state. Such inquisitions shall be signed by such jurors, and the coroner shall certify the fact that the inquest was held, and indorse under the verdict his approval or nonapproval of the same. Jury may separate.

Sec. 14. It shall not be necessary that the jury should be kept together until they have agreed upon a verdict. If there shall appear any irreconcilable opinion as to any material fact concerning which they are to make inquest, the jurors agreeing may find accordingly, and two or more inquisitions may be presented.

Coroner.

Sec. 15. If the jury find that any murder or manslaughter has been committed, the coroner shall bind over the witnesses against the accused to appear and testify at the next court or grand jury, or before any court at which an indictment for the offense can be found and triable that shall be held in the county, and obey all orders of said court in the premises. Such recognizance shall be

in writing and shall be subscribed by the parties to be bound thereby. Said recognizances shall be made payable to the people of the State of California. The amount of the same shall be fixed by the coroner, county judge, or by the district attorney, and approved by the county judge or any of the judges of a court of record; and in case of their refusal to sign such recognizance, the coroner shall have power to commit such witness as in the case of examination of criminals by a magistrate.

Testimony returned to county clerk.

Sec. 16. The testimony of all witnesses examined before a coroner's jury, together with the inquisition of the jury, and all recognizances taken by such coroner, shall be returned by him forthwith to the county clerk of his county.

Power of coroner.

Sec. 17. The coroner shall have the same power on all investigations or inquests as are allowed by law to judges of courts of record in this state to preserve order in the matter of investigations before him; and for any disrespect shown toward him or contempt of his authority in his investigations by any juror, witness, or other person, he shall have power to issue an order for the arrest of said person or persons, and forthwith to have said person or persons brought before the police judge or county judge of his county, to be punished according to law.

Contempt.

Sec. 18. Any juror, witness, or other person summoned as juror, witness, or any other person who may be in attendance on any official investigation, who shall use any disrespectful language toward said coroner, or behave disrespectfully towards said coroner in his presence, shall be declared guilty of contempt, and shall be liable to pay a fine not to exceed one hundred dollars, or

be imprisoned in the county jail of said county not to exceed sixty days; said imprisonment to be enforced by any of the magistrates named in the preceding sections, upon the warrant of the coroner as provided for in the last section.

To issue process.

Sec. 19. If the coroner's jury find that any murder or manslaughter has been committed, and the person charged with such offense be not in custody, the coroner shall have power to issue process for the arrest of the person charged. The warrant of arrest must be under the hand of the coroner, and must recite the finding of the jury upon the inquest, and be directed to the sheriff, or to any constable, marshal, or policeman of the county, and commanding the officer to whom it shall be directed forthwith to take the person accused of having committed such offense, and to bring him before a committing magistrate, to be dealt with according to law. The warrant of the coroner shall be served in the same manner and in the same places as criminal process issued by a justice of the peace in any county of the state, without indorsement by a magistrate of such county.

Burial of indigent dead.

Sec. 20. When the inquest shall be held by the coroner, and there shall be no friends to take charge of the body of the deceased, it shall be the duty of the coroner, after the same has been viewed by him and the jury, to see that it is properly buried, and for that purpose he shall immediately give notice to the person or firm having the contract for the burial of the indigent dead, for burial of the body, and it shall be buried by him, under the provisions of said contract. [Amendment approved March 30, 1874; 1873-4, 908; took effect from passage.]

Money and valuables.

Sec. 21. It shall be the duty of the coroner to take charge of all money and other valuable things which may be found with or upon the bodies of persons on whom inquests shall be held, when there is no other person legally entitled to take charge of the same; and he shall forthwith make out and enter in a book to be kept in his office, open to public inspection, a full and complete inventory of all money, and every article or thing of value found with or upon said deceased, and he shall also make an entry in said book of any note or memorandum found upon said deceased, that may tend, in any way, in the future, to identify said person. Said coroner shall, within thirty days after the holding of such inquest, deliver over to the treasurer of said city and county all such money or valuable things which have not been claimed by legal representatives of the deceased or the public administrator. Said coroner shall also keep in his office another book, open to public inspection, in which he shall enter a full description of every article and thing, and all money found with or upon the bodies of deceased persons, or belonging to said deceased persons, that may come into his possession, before he delivers up, or permits the same to go out of his possession; and no money, article, thing, or property of any nature or kind, shall be delivered to any person until the same shall have been entered in said book as aforesaid, and signed in the presence of said coroner, by the person receiving the same. [Amendment approved March 30, 1874; 1873-4, 908; took effect from passage.]

Failure to perform duties.

Sec. 22. For a failure on the part of the coroner to perform such duty required by the last section, or any of the duties required by this act, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine

not exceeding five thousand dollars, or imprisonment in the county jail not to exceed one year, and shall be liable on his official bond for any and all moneys, chattels, and property which shall be found on said deceased, and which shall or may come into his possession belonging to said deceased; the same to be recovered in the name of any party who may be entitled to recover the same in any court having jurisdiction thereof.

Property, how disposed of.

Sec. 23. Upon the delivery of money so found to the treasurer, he shall place it to the credit of the county. If other property, and perishable in its nature, he shall within thirty days sell the same at public auction, upon reasonable public notice, and shall in like manner place the proceeds to the credit of the county. Other property shall only be sold upon the order of the county judge. If the said money or property in the treasury be demanded within six years by the legal representatives of the deceased, the treasurer shall, upon legal showing, after deducting the fees and expenses of the coroner, and of the county in relation to the matter, pay the balance thereof to such legal representative.

Statement of coroner.

Sec. 24. Before auditing and allowing the accounts of the coroner, the supervisors of the county shall require a statement from him, in writing, containing an inventory of all money and other valuables found with or upon all persons upon whom inquests shall have been held, and the manner in which the same has been disposed of, verified by the oath or affirmation of the coroner making the same that such statement is in all respects just and true, and that the money and other articles mentioned therein have been delivered to the treasurer of the county, or to the legal representatives of such person or persons.

Coroner to act as sheriff.

Sec. 25. The coroner shall perform the duties of sheriff in all cases when the sheriff is interested or otherwise incapacitated from serving. Whenever the coroner acts as sheriff he shall possess the powers and perform all the duties of the sheriff, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services.

Vacancy.

Sec. 26. If the office of coroner be vacant, or he be absent or unable to attend, the duties of his office may be performed by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

Record of inquests.

Sec. 27. The coroner of the city and county of San Francisco, in addition to the duties imposed by this act upon every coroner, shall keep a record of all inquests held by him, with a copy of all testimony and the inquisition of the juries in full; and in case of loss of the original records, the same shall be admissible in evidence with like effect as the original would have been.

Deputy coroners and messenger.

Sec. 28. The coroner of said city and county shall be authorized to appoint two clerks, who shall be sworn to act as first and second deputy coroners in all matters, except those duties or inquests which have been forbidden to be delegated by this act. The salary of the clerk sworn to act as first deputy coroner shall not exceed one hundred and fifty dollars per month, and the salary of the clerk sworn to act as second deputy coroner, one hundred and twenty-five dollars per month, which shall be paid from the special fee fund of the said city and county. The coroner of said city and county shall be authorized to ap-

point a messenger, whose duty it shall be to have charge of the dead-wagon, keep in order the morgue, and perform such other duties as are required by the coroner or his deputies in connection with the duties of his office. He shall receive a salary not to exceed seventy-five dollars per month, to be paid in like manner as that of the coroner's clerks. [Amendment approved March 22, 1876; 1875-6, 397; took effect from passage.]

Supervisors to provide rooms and morgue.

Sec. 29. The board of supervisors of the city and county of San Francisco are hereby authorized to provide a suitable office and jury-room, and dead-house, or morgue, with the furniture necessary to enable the coroner to efficiently discharge the duties of his office, and to make the necessary appropriation therefor. They are further authorized to audit and pay, for the necessary expenses of maintaining the morgue and offices attached, such sum as may be necessary, not to exceed seventy-five dollars per month, to be paid out of the general fund.

Salary.

Sec. 30. The coroner of the city and county of San Francisco shall receive no fees for any services rendered by him, but he shall in lieu thereof receive a salary of four thousand dollars per annum, payable in like manner as other county officers within said county, to be audited by the auditor and paid out of the same fund provided for in the city and county treasury as in the cases of other officers in said city and county.

Repealing.

Sec. 31. All acts or parts of acts in conflict with the provisions of this act, so far as they so far conflict, are hereby repealed. This act shall apply only to the city and county of San Francisco.

Sec. 32. This act shall be in force from and after its passage. [Approved March 16, 1872; 1871-2, 403.]

An act to provide for furnishing assistants to the coroner of each city or city and county having one hundred thousand or more inhabitants, and providing the mode in which such assistants shall be appointed and designated, and establishing the compensation and prescribing the duties of such assistants.

Section 1. It shall be lawful for the coroner of every city or city and county of this state having one hundred thousand or more inhabitants to select and appoint five assistants. Such assistants shall hold their respective offices at the pleasure of said appointing power.

Sec. 2. Such assistants shall be classified and designated as follows: First deputy coroner, second deputy coroner, third deputy coroner, fourth deputy coroner, messenger. Said deputies shall be allowed and receive salaries as follows: The salary of the first deputy shall be two hundred dollars per month; the salary of the second deputy shall be one hundred and fifty dollars per month; the salary of the third and fourth deputies shall be one hundred and twenty-five dollars per month each; the salary of the messenger shall be seventy-five dollars per month. It shall be the duty of said deputies to act as deputy coroners in all matters, except as to those duties which are forbidden to be delegated. It shall be the duty of the messenger to have charge of the dead-wagon, keep in order the morgue, and perform such other duties as are required by the coroner or his deputies.

Sec. 3. The salaries of the said assistants shall

be audited and paid monthly out of the general fund of the said city or city and county.

This act shall take effect from and after its passage. [Approved March 23, 1893; Stats. 1893, p. 190.]

An Act prescribing the fees of coroners and elisors and their mode of payment.

Fees of coroner or elisor.

Section 1. Whenever process is executed, or any act performed by a coroner or elisor in the cases provided by law in that behalf, such coroner or elisor shall be entitled to receive the same fees as the sheriff would be entitled to receive for the same service, to be paid by the plaintiff in case of the summoning of jurors to complete the panel, and by the person or party requiring the service in all other cases in private actions. If rendered at the instance of the people, it shall be audited and paid as a county charge.

Sec. 2. This act shall take effect immediately from and after its passage. [Approved March 30, 1874; 1873-4, 794.]

CORPORATIONS.

An Act to protect stockholders and persons dealing with corporations in this State.

Section 1. Any superintendent, director, secretary, manager, agent, or other officer, of any corporation formed or existing under the laws of this state, or transacting business in the same, and any person pretending or holding himself out as such superintendent, director, secretary, manager, agent, or other officer, who shall willfully sub-

scribe, sign, indorse, verify, or otherwise assent to the publication, either generally or privately, to the stockholders or other persons dealing with such corporation, or its stock, any untrue or willfully and fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or other paper or document intended to produce or give, or having a tendency to produce or give, to the shares of stock in such corporations a greater value, or less apparent or market value than they really possess, or with the intention of defrauding any particular person or persons, or the public, or persons generally, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the State prison or county jail not exceeding two years, or by a fine not exceeding five thousand dollars, or by both; provided, that this act shall be construed to apply only to corporations whose capital stock has been or shall hereafter be listed at a stock board or stock exchange in this state, or whose shares be regularly bought and sold in the stock market of this state. [Approved March 29, 1878; Stats. 1877-8, p. 695.]

COSTS.

An Act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the State Prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of Coroner inquests in said prison.

Section 1. The costs and expenses of all trials which have heretofore been had in the county in this state where the State prison is situated, for

any crime committed by any convict in the State prison, and the costs of guarding and keeping such convict, and the execution of the sentence of said convict by said county, and the costs and expenses of all trials heretofore had for the escape of any convict from the State prison, and the costs and expenses of all coroner inquests heretofore had of any convict at the State prison by the county where said prison has been situated, shall be certified to by the county clerk of said county wherein said trials and inquests have been held to the board of state prison directors for their approval, and after such approval they shall pay the same out of the money appropriated for the support of the State prison, to the county treasurer of said county where said trials have been had; "provided, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and seventy-three."

Sec. 2. This act shall only apply to cases which have not been settled for by the state.

Sec. 3. This act shall take effect immediately. [Approved April 12, 1880; Stats. 1880, p. 43, Ban. ed., 204.]

ELECTIONS.

An Act to prohibit "Piece Clubs," and to prevent extortion from candidates for office.

Section 1. All payments and contributions of money for election expenses, made by candidates for office in this state shall hereafter be assessed and made by such candidates by voluntary assessment among themselves, and not otherwise, and at meetings to be called for such purpose, at which meetings none but candidates for office at the next ensuing election shall be present or participate.

Sec. 2. Any person being a candidate for office in this state, who shall directly or indirectly pay, or knowingly cause to be paid, any money or other valuable thing to any person, as an assessment or contribution for the expenses of the election at which such person or candidate is to be voted for, except the contribution or assessment so agreed upon by such meeting of candidates, shall be deemed guilty of a misdemeanor, and, upon conviction, punished accordingly.

Sec. 3. It shall not be lawful for any committee, convention, or other association, formed for the purpose of nominating a candidate or candidates for office in this State, to levy, assess, collect, demand, or receive, directly or indirectly, any money or other valuable thing from any candidate or candidates nominated for office by such committee, convention, or other association, either for the expenses of printing or distributing tickets, or for any of the expenses of the election of such candidate or candidates, or as or for the expenses of such nominating convention, committee, or other association, or under or upon any pretense whatsoever.

Sec. 4. Any officer or member of any such committee, convention, or association, or other person, who shall vote for, aid, authorize, assist, or consent to any such levy, assessment, or collection from any candidate or candidates, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

Sec. 5. Any person who shall demand, ask for, collect, or receive, either directly or indirectly, any money or other valuable thing from any candidate or candidates for office in this State, on the ground that such money or other valuable thing has been assessed to such candidate or candidates, or asked for, demanded, or required by any person, nominating convention, committee, or other political association, as or for the costs of

printing or distributing tickets, or for the payment of election expenses of any kind or nature whatsoever, or as or for the expenses of such nominating committee, convention, or association, shall, for each offense, be deemed guilty of a misdemeanor, and, on conviction, shall be punished accordingly; but nothing herein contained shall prevent the candidates at any election from assembling together and voluntarily assessing themselves for any expenses authorized by law for the common good of the ticket, and to collect and disburse the same by agents appointed for such purpose.

Sec. 6. Any person who shall voluntarily and unsolicited offer to work for and assist, or in any manner whatsoever contribute to the nomination or election of any candidate or other person to any office in this state, for the purpose and with the intent to have such candidate or person pay for, or in any manner compensate such person so offering for such work or services, shall be deemed guilty of a misdemeanor, and, on conviction, punished accordingly.

Sec. 7. This act shall apply only to the city and county of San Francisco. [In effect March 14, 1878. Stats. 1877-8, p. 236.]

EMIGRATION.

An Act to promote emigration from the state of California.

Section 1. It shall be unlawful for the owners, officers, agents, or employees of any steamship company, sailing vessel, or railroad company or firm, or corporation that may be engaged in this state in the transportation of passengers to

and from any foreign port, to withhold or refuse any person or persons the right to purchase a passage ticket or tickets to any foreign country for the reason that he or they have not presented a certificate, card, or other document whatsoever, showing that such person has paid in full, or in part, any or all dues, debts, or demands, or otherwise, or any sum whatsoever, to any society, company, corporation, association, or individual, or firm; and any person or corporation who shall violate the provisions of this section, or in pursuance of any agreement, oral or written, refuse to sell a passage ticket to any person to any foreign country, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred nor more than five hundred dollars; provided, that nothing in this section shall be construed in any manner to apply to any passport or other document required by law to be presented, having the signature or seal of any foreign consul resident within this state. [In effect March 26, 1880. Stats. 1880, p. 15, Ban. ed. 50.]

EXPLOSIVES.

An Act to protect life and property against the careless and malicious use or handling of dynamite and other explosives.

Section 1. It is the duty of each and every person, contractor, firm, association, joint stock company, and corporation, manufacturing, storing, selling, transferring, disposing of, or in any manner dealing in, or with, or using, or giving out nitro-glycerine, dynamite, vigorite, hercules powder, giant powder, or other high explosive, by whatever name known, to keep at all times an ac-

curate journal, or book of record, in which must be entered, from time to time, as they are made, each and every sale, delivery, transfer, gift, or other disposition made by such person, firm, association, joint stock company, or corporation, in the course of business or otherwise, of any quantity of such explosive substance.

Sec. 2. Such journal, or record book, must show, in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating the name and quantity of the explosive sold, delivered, given away, transferred, or otherwise disposed of; the name, place of residence, or business of the purchaser or transferee; the name of the individual to whom delivered, with his or her address, with a description of such individual sufficient to provide for identification.

Sec. 3. Such journal or record book must be kept by the person, firm, association, joint stock company, or corporation so selling, delivering, or otherwise disposing of such explosive substance, or substances, in his or their principal office or place of business, at all times subject to the inspection and examination of the peace officers or other police authorities of the State, county, city and county, or municipality where the same is situated, on proper demand made therefor. Any failure or neglect to keep such book, or to make the proper entries therein at the time of the transaction, as herein provided, or to exhibit the same to the peace officers or other police authorities on demand, shall be deemed a misdemeanor, and punished accordingly.

Sec. 4. In addition to such punishment, and as a cumulative penalty, such person, firm, association, joint stock company, or corporation so offending, shall forfeit, for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction, by action at law. The party so instituting such actions shall

not be entitled to dismiss the same without consent of the court before which the suit has been instituted. Nor shall any judgment recovered be settled, satisfied, or discharged, save by order of such court, after full payment into court, and all moneys so collected shall be paid to the party bringing the suit.

Sec. 5. Any person who in the public street or any highway of any county, city and county, city, or town or city, or at, in, or near to any theater, hall, public or private school, or college, church, hotel, or other public building, or at, in, or near to any private habitation, or in, on board of, or near any railway passenger train, or car or train, or cable road, or car of the same, or steam or other vessel, engaged in carrying passengers, or ferryboat, or other public place, where human beings ordinarily pass and repass, shall recklessly or maliciously have in his or her possession any dynamite, nitro-glycerine, vigorite, hercules powder, giant powder, or other high explosive, or who shall recklessly or maliciously, by use of such means, intimidate, terrify, or endanger any human being, is guilty of a felony, and on conviction shall be punished accordingly.

Sec. 6. Any person not regularly engaged in the manufacture, sale, transportation, or legitimate use in blasting operations, or in the arts, of such substances as are named in this Act, shall be presumed (*prima facie*) to be guilty of a reckless and malicious possession thereof, within the meaning of the foregoing section, if any such substance is found upon him, or in his possession, in any of the places or under any of the circumstances specified in the preceding section.

Sec. 7. No person may knowingly keep or have in his or her possession any dynamite, vigorite, nitro-glycerine, giant powder, hercules powder, or other high explosive, except in the regular course of business carried on by such person, el-

ther as a manufacturer thereof, or merchant dealing in the same, or for use in legitimate blasting operations, or in the arts, or while engaged in transporting the same for others, or as the agent or employee of others engaged in the course of such business or operations. Any other possession of any such explosive substances as are named in this Act is unlawful; and the person so unlawfully possessing it shall be punished by imprisonment in the State prison not exceeding five years, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Sec. 8. Any person who maliciously deposits or explodes, or who attempts to explode, at, in, under, or near any building, vessel, or boat, railroad, tramroad, or cable road, or any train, or car, or any depot, stable, car-house, theater, school-house, church, dwelling-house, or other place where human beings usually inhabit, assemble, frequent, or pass and repass, any dynamite, nitro-glycerine, vigorite, giant or hercules powder, gunpowder, or other chemical compound, or other explosive, with the intent to injure or destroy such building, vessel, boat, or other structure, or with the intent to injure, intimidate, or terrify any human being, or by means of which any human being is injured or endangered, is guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the State prison not less than one year.

Sec. 9. Any person, firm, or corporation, who shall take, carry, or transport, or cause to be taken, carried, or transported, any dynamite, vigorite, nitro-glycerine, hercules or giant powder, or other high explosive, into the limits of, or through, or across any incorporated city or town of this State, or into, through or across any harbor for shipping, in any manner, condition, or quantity, or otherwise, in violation of the laws or ordinances of such city or town, or of the laws or regula-

tions governing such harbor, shall, in addition to the penalties provided or imposed by such laws, ordinances, or regulations, forfeit to the State of California all such explosive substances, as well as the cases inclosing the same. Such forfeiture may be sued for by any citizen of the State, for himself and the State; and the goods or property, when so forfeited and recovered by judgment of the Court, shall be sold, and the proceeds divided, the citizen so suing taking one-half to himself for his own benefit, and paying the other half into the State treasury. Such action may be maintained in any court of competent jurisdiction; provided, that the State shall never be liable to any cost or expense for any such suit or proceeding.

Sec. 10. Any of the forfeitures provided for in this Act may be taken advantage of, and sued for, and recovered, by any peace officer or policeman, member of the police force of any city, city and county, or town where the same arises, for his own benefit, notwithstanding any law, ordinance, or rule, to the contrary.

Sec. 11. This Act shall take effect and be in force from and after its passage. [Approved March 12, 1877.]

FENCES AND INCLOSURES.

An Act to prevent persons passing through inclosures and leaving them open, and tearing down fences to make passage through inclosures.

Section 1. Any person passing through an inclosure of another and leaving the same open, is guilty of a misdemeanor, and punishable by a fine not less than twenty dollars nor more than fifty dollars.

Sec. 2. Any person willfully or maliciously tearing down fences to make a passage through an inclosure, is guilty of a misdemeanor, and punishable by a fine not less than fifty dollars nor more than five hundred dollars.

Sec. 3. All fines collected under the provisions of this act shall be paid into the county school fund of the county where the offense is committed. [In effect March 16, 1872. Stats. 1871-2, p. 384.]

**An Act to prevent the leaving open of inclosures,
and hunting on inclosed lands.**

Section 1. Every person who shall open any gate, bars, or fence of another, for the purpose of passing through, and shall willfully leave the same open, without the permission of the owner, is guilty of a misdemeanor.

Sec. 2. Every person who willfully opens, tears down, or otherwise destroys any fence on the inclosed land of another, is guilty of a misdemeanor.

Sec. 3. Every person who willfully enters upon the inclosed land of another for the purpose of hunting, or who discharges fire-arms, or lights camp-fires thereon, without first having obtained permission of the owner or occupant of said land, is guilty of a misdemeanor.

Sec. 4. Every person who willfully, carelessly, or negligently, while hunting or camping upon the inclosed land of another, kills, maims, or wounds an animal, the property of another, is guilty of a misdemeanor.

Sec. 5. Every person who, upon departing from camp, willfully leaves the fire or fires burning or unextinguished, is guilty of a misdemeanor.

Sec. 6. Every person found guilty of any of the misdemeanors herein mentioned shall be fined not less than twenty, nor more than fifty dollars, and

shall be imprisoned in the county jail until such fine to be satisfied, not exceeding one day for every two dollars thereof.

Sec. 7. All acts and parts of acts in conflict herewith are repealed; provided, however, nothing herein contained shall be construed as repealing section five hundred and ninety-four of the Penal Code.

Sec. 8. Section three of this act shall not apply to the counties of Los Angeles, San Diego, Sutter, San Benito, Del Norte, El Dorado, Colusa, Yuba, Humboldt, Amador, Tuolumne, San Luis Obispo, Plumas, Lassen, Siskiyou, Modoc, Shasta, Trinity, Sierra, Placer. [In effect March 23, 1876. Stats. 1875-6, p. 408.]

FIRES.

An Act to prevent the destruction of forests by fire on public lands.

Section 1. Any person or persons who shall willfully and deliberately set fire to any wooded country or forest belonging to this State or the United States, within this State, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country or forest, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purposes or otherwise, in or near any such wooded country or forest, and through carelessness or neglect shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor.

or, and on conviction before a court of competent jurisdiction, shall be punishable by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; provided, that nothing herein contained shall apply to any person who in good faith shall set a back fire to prevent the extension of a fire already burning. All fines collected under this act shall be paid into the county treasury for the benefit of the common school fund of the county in which they are collected. [Approved February 13, 1872. Stats. 1871-2, p. 96].

**An Act to prevent destruction by fire of property
of contiguous owners.**

Section 1. Every person who starts a fire in hay, grain, stubble, or grass, without first carefully providing, by plowing or otherwise, for the keeping of said fire within and upon the premises upon which it is started or set out, and by reason of the non-providing of such barrier any property of an adjoining or contiguous resident or owner is injured, damaged, or destroyed, is guilty of a misdemeanor.

Sec. 2. This act shall take effect and be in force from and after its passage. [Approved March 31, 1891; Stats. 1891, p. 473.]

Penal Code.—47

FISH.

An Act to authorize the board of fish commissioners of this State to purchase the land on which the State fish hatcheries at Sisson are now situated, and appropriating money therefor.

Section 1. The board of fish commissioners of this State are hereby authorized and empowered to purchase, out of the fund for the support and maintenance of the State hatcheries, the land on which the State fish hatcheries at Sisson are now situated, at a sum not to exceed five hundred dollars.

Sec. 2. The sum of five hundred dollars is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, for the purpose mentioned in the preceding section.

Sec. 3. This act shall take effect from and after its passage. [Approved March 31, 1891; Stats. 1891, p. 258.]

An Act concerning the payment of the expenses and costs of the trial of persons charged with the violation of the laws for the preservation of fish in the navigable waters of this State.

[Approved February 28, 1887; 1887, 5.]

Expenses of trials of persons violating provisions of law for preservation of fish, by whom borne.

Section 1. The costs and expenses of all trials which shall hereafter be had in any county of this State, of any person charged with having, on any of the navigable waters of this State, violat-

ed any of the provisions of any law of this State for the preservation of fish, and the costs of keeping and guarding such person, and the execution of the sentence of said person by said county, shall be borne and paid by the State.

Claims against state.

Sec. 2. Any claim against the State for costs or expenses named in this act shall be presented to the board of examiners of the State, certified by the district attorney of the county in which the trial was had, and shall be acted upon by said board as other claims against the State are acted on, and paid in the same manner.

Sec. 3. This act shall take effect immediately.

An Act relating to fishing in the waters of this State.

Section 1. All aliens incapable of becoming electors of this State are hereby prohibited from fishing, or taking any fish, lobster, shrimps, or shell fish of any kind, for the purpose of selling, or giving to another person to sell. Every violation of the provisions of this act shall be a misdemeanor, punishable upon conviction by a fine of not less than twenty-five dollars, or by imprisonment in the county jail for a period of not less than thirty days. [In effect April 23, 1880; Stats. 1880, p. 123, Ban. ed. 388.]

This act was held unconstitutional: *In re Ah Chong*, 5 Pac. C. L. J. 451.

An Act to provide for the construction, maintenance and regulation of fishways in streams naturally frequented by salmon, shad, and other migratory fish.

Section 1. It shall be the duty of the State board of fish commissioners to examine, from time to time, all dams and artificial obstructions in all rivers or streams in this State, naturally frequented by salmon, shad, or other migratory fish, and if, in their opinion, there is not free passage for fish over or around any dam or artificial obstruction, to notify the owners or occupants thereof to provide the same within a specified time with a durable and efficient fishway of such form and capacity and in such location as shall be determined by the fish commissioners, or person authorized by them. If such fishway is not completed to the satisfaction of said commissioners within the time specified, the owners or occupants of such dam or artificial obstruction shall be deemed guilty of a misdemeanor, and may be prosecuted by action on complaint before any justice's court or justice of the peace in the county where such dam or artificial obstruction is situated, and, on conviction, shall be fined two hundred and fifty dollars and the plaintiff shall recover full costs; and one-half of such fine shall be for the benefit of and shall be paid to the person making the complaint, and the other half shall be paid into the State treasury for the benefit of the fund for "preservation and restoration of fish," and may be expended by the State board of fish commissioners, in their discretion, for the construction and maintenance of fishways.

Sec. 2. It shall be incumbent upon the owners or occupants of all dams or artificial obstructions, where the State board of fish commissioners re-

quire such fishways to be provided, to keep the same in repair, and open, and free from obstructions to the passage of fish at all times; and any owners or occupants of any such dam or artificial obstruction who neglect or refuse to keep such fishway in repair, and open, and free from obstruction to the passage of fish, shall be guilty of a misdemeanor, and subject to the same fine, and which shall be recovered in the same manner, and applied to the same purposes, as provided in section one of this act.

Sec. 3. Any person who shall willfully or knowingly destroy, injure or obstruct any such fishway, or any person who shall at any time take or catch any salmon, shad, or other migratory fish or trout, except by hook and line, within three hundred feet of any fishway required by the state board of fish commissioners to be provided and kept open, or shall take or catch any such fish in any manner, within fifty feet of such fishway, shall be guilty of a misdemeanor, and subject to the same fine, and which shall be recovered in the same manner and applied to the same purposes as provided in section one of this act. [In effect April 16, 1880; Stats. 1880, p. 121, Kan. ed. 387.]

An Act for the protection of certain kinds of fish.

Section 1. From and after the passage of this act, and until the first day of July, A. D. eighteen hundred and eighty-two, it shall be unlawful for any person to catch any catfish in any of the public waters of this State, except by means of a hook and line.

Sec. 2. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be punished as follows: For the first offense, by a fine of not less

than fifty dollars, or imprisonment in the county jail for not less than fifty days, or both such fine and imprisonment; for the second, and each subsequent offense, by a fine of not less than two hundred and fifty dollars, or by imprisonment in county jail for a period of not less than two hundred and fifty days, or both such fine and imprisonment.

Sec. 3. Any person giving information which leads to the conviction of any person or persons for violating the provisions of this act shall, upon the conviction of such person or persons, be entitled to receive one-half of the fine imposed upon such person or persons. [In effect April 16, 1880; Stats. 1880, p. 106, Ban. ed. 345.]

An Act to prevent the catching of fish by seines, nets, or wears, in the San Antonio creek in the county of Alameda.

Use of seines and nets unlawful.

Section 1. It shall not be lawful for any person to catch fish in the waters of the San Antonio creek, in the county of Alameda, by the use of seines, nets, or wears.

Penalty for violation.

Sec. 2. Any person violating the provisions of this act shall be subject to a penalty of not less than fifty nor more than one hundred dollars for each offense, or imprisonment in the county jail of the county of Alameda for a term of not less than thirty nor more than sixty days, which penalty may be enforced by any police judge or justice of the peace of said county.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 20, 1876; 1875-6, 362.]

An Act to prohibit the destruction of fish in Alameda county.

Catching fish in Lake Chabot.

Section 1. It shall not be lawful for any person to catch, take, or destroy any fish of any kind in the body of water known as Lake Chabot, in the San Leandro creek, in Alameda county, belonging to the Contra Costa Water Company, without permission of the owner or owners thereof.

Catching fish in San Leandro creek.

Sec. 2. It shall not be lawful to take, kill, or destroy any brook or speckled trout, salmon, or salmon trout, or any other species of fish in San Leandro creek and its branches or tributaries, or in any of the streams or watercourses of said county, between the first day of October of each year and the first day of April of the following year.

Misdemeanor.

Sec. 3. Any person violating the provisions of this act shall be guilty of a misdemeanor.

Sec. 4. This act shall take effect and be in force from and after its passage. [Approved March 28, 1878; 1877-8; 598.]

An Act to prevent the destruction of fish in Kings river.

Passage of fish through ditches prevented, how.

Section 1. The proprietors of all water-ditches and flumes drawing their supply from the waters of Kings river shall place and keep in good repair at the heads of their respective ditches or flumes through which all the water from the river entering the ditch or flume shall pass, strips of wood or other material, the meshes between which shall not exceed one inch in width, for the

prevention of the passage of fish from the river into the flumes or ditches. Any person taking water from Kings river in violation of the provisions of this act is guilty of a misdemeanor. [Approved March 28, 1878; 1877-8, 601.]

An Act for the preservation of fish in the waters of Lake Bigler.

Catching fish, except by hook and line, in Lake Bigler.

Section 1. It shall not be lawful for any person or persons to catch or kill any fish in the waters of Lake Bigler, or in any stream leading into or from said Lake Bigler, with any seine, gill-net, spear, wire fence, basket, trap-set net, or dam, or any poisonous, deleterious, or stupefying drug, or explosive compound, or any other implement or appliance, except by means of a hook and line.

Penalty.

Sec. 2. Any person or persons who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace, in Placer county, El Dorado county, or Nevada county, shall be punished by a fine of not less than one hundred dollars nor more than five hundred, or by imprisonment in the county jail not less than thirty days nor more than four months, or by both such fine and imprisonment, in the discretion of the court, for each and every offense, besides the cost of prosecution.

Fines, how paid.

Sec. 3. The district attorney, or his deputy, of El Dorado county, or of Placer county, or of Nevada county, whichever the informer may notify as within the district attorney's jurisdiction, shall prosecute such suits, and upon conviction all fines,

damages, and penalties that may be awarded or collected under this act shall be paid one half to the district attorney and one half to the informer, share and share alike; and it is hereby made the duty of the district attorney, or his appointed deputy, in the counties of Placer, El Dorado, and Nevada, to prosecute all cases arising under this act.

Sec. 4. All acts, and provisions of any act or parts of acts conflicting with this act, are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its passage. [Approved March 30, 1878; 1877-8, 746.]

GAME LAWS.

Fish: See ante, title Fish.

Act to prevent hunting on enclosed lands: See ante, title Fences.

An Act for the protection of game in Nevada county.

Elk, deer, and antelope, in Nevada county.

Section 1. It shall not be lawful for any person or persons to take, kill, or destroy the male or female of any elk, deer, or antelope, in the county of Nevada, between the first day of February and the first day of August of each year.

Sec. 2. All acts and parts of acts, so far as the same may conflict with the provisions of this act, are hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved February 6, 1874; 1873-4; 80.]

An Act to prevent the destruction of deer on Monte Diablo, in Contra Costa county.

Hunting or killing deer at Mount Diablo—Misdemeanor.

Section 1. Every person who shall hunt, pursue, kill, or destroy any male or female deer or fawn within three miles of the summit of Monte Diablo, in Contra Costa county, for the period of four years from the date of the passage of this act, is guilty of a misdemeanor.

Sec. 2. This act shall take effect immediately. [Approved March 28, 1878; 1877-8; 599.].

An Act to prevent the capture and destruction of blue cranes in this State.

Section 1. Any person or persons who shall willfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any blue crane in the State of California, or shall knowingly take, injure, or destroy the nest of any white or blue crane, or shall take, injure, or destroy any blue crane's eggs, in the nest or otherwise, in said State, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the township in which the offense shall have been committed, shall be fined in a sum not less than fifty dollars nor exceeding one hundred dollars, and cost of the action for each offense, or may be imprisoned not less than fifty days nor more than one hundred days, or by such fine and imprisonment as the judgment of the court may direct.

Sec. 2. Of all fines collected under the provisions of this act one-half shall be paid to the informer or informers, and one-half shall be paid

into the county treasury for the benefit of the common school fund.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 16, 1889.]

An Act to protect sea-gulls in the neighborhood of Santa Monica.

Misdemeanor.

Section 1. Every person who willfully kills or destroys any of that species of sea birds known as gulls, within five miles of the town of Santa Monica, in Los Angeles county, is guilty of a misdemeanor.

Sec. 2. This act shall take effect and be in force from and after its passage. [Approved March 15, 1876; 1875-6, 287.]

An Act to prevent the capture and destruction of mocking birds in this State.

Section 1. Any person or persons who shall willfully and knowingly shoot, wound, trap, snare, or in any other manner catch or capture any mocking bird in the state of California, or shall knowingly take, injure, or destroy the nest of any mocking bird, or shall take, injure, or destroy any mocking bird's eggs, in the nest or otherwise, in said State, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of the township in which the offense shall have been committed, shall be fined in a sum not less than five dollars nor exceeding ten dollars, and cost of the action for each offense, or may be imprisoned not less than five days nor more than ten days, or by both such

fine and imprisonment, as the judgment of the court may direct.

Sec. 2. All fines collected under the provisions of this act shall be paid into the county treasury for the benefit of the common school fund. [In effect February 14, 1872; Stats. 1871-2, p. 102.]

GOVERNOR.

An Act imposing certain duties upon the governor of the State.

Section 1. The governor shall offer a standing reward of three hundred dollars (\$300) for the arrest of each person engaged in the robbery of, or in an attempt to rob any person or persons upon, or having in charge, in whole or in part, any stage coach, wagon, railroad train, or other conveyance engaged at the time in carrying passengers, or any private conveyance within this State; the reward to be paid to the person or persons making the arrest, immediately upon the conviction of the person or persons so arrested; but no reward shall be paid except after such conviction. [In effect April 3, 1876; Stats. 1875-6, p. 855.]

GRAND ARMY.

An Act entitled an Act to prevent persons from unlawfully using or wearing the badge of the Grand Army of the Republic of this State.

Section 1. Any person who shall willfully wear the badge of the Grand Army of the Republic, or

who shall use or wear the same to obtain aid or assistance thereby within this State, unless he shall be entitled to use or wear the same under the rules and regulations of the Department of California, Grand Army of the Republic, shall be guilty of misdemeanor, and upon conviction shall be punished by imprisonment for a term not to exceed thirty (30) days in the county jail, or a fine not to exceed twenty (20) dollars, or by both such fine or imprisonment.

Sec. 2. This act shall take effect and be in force from and after the date of its passage. [Approved March 10, 1887.]

GROWING TREES.

An Act to protect the groves of big trees in the counties of Fresno, Tulare, and Kern.

Misdemeanor.

Section 1. Any person or persons who shall willfully cut down or strip of its bark, any tree "over sixteen feet in diameter," in the grove of big trees situated in the counties of Fresno, Tulare, or Kern, or shall destroy any of said trees, by fire, shall be guilty of a misdemeanor, and shall, on conviction thereof before any justice of the peace in said counties, be fined not less than (\$50) fifty dollars nor more than (\$300) three hundred dollars, or imprisonment in the county jail not less than (25) twenty-five days nor more than (150) one hundred and fifty days, or both fine and imprisonment, as the court may determine.

Disposition of fines.

Sec. 2. Upon the arrest and conviction of any person or persons guilty of any of the acts before mentioned, the party informing shall be entitled to one half of the fines collected.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 13, 1874; 1873-4, 347.]

HOUSE OF CORRECTION.

An act to provide for the commitment of persons convicted of crime to the house of correction.

Section 1. Any court or judicial officer authorized by law to commit persons to the county jail in any county, or city and county, of this State, wherein there is situated a house of correction, may commit to said house of correction, instead of to the county jail, any person convicted of crime, the punishment for which now is imprisonment in the said jail; but no person shall be sentenced to imprisonment therein for a shorter or longer term than that for which he might be sentenced in the county jail.

Sec. 2. This act shall take effect immediately. [Approved March 9, 1885; 1885, 34.]

An act to repeal an act entitled "An act in relation to the house of correction of the city and county of San Francisco," approved April 1, 1878.

Section 1. The act entitled "An act in relation to the house of correction of the city and county of San Francisco," approved April first, eighteen hundred and seventy-eight, is hereby repealed.

Sec. 2. Every person who shall, at the time of the taking effect of this act, be confined in the house of correction, under or by virtue of a sentence of imprisonment therein, shall remain in the

county jail till his term of imprisonment shall expire; and so far as relates to him, the county jail shall be deemed the house of correction, and he shall be in the charge and keeping of the sheriff of the city and county of San Francisco, who shall have the same power over him that the superintendent of the house of correction might exercise if he was in fact in the house of correction. [Approved February 23, 1893; Stats. 1893, p. 5.]

The act repealed by the above act is as follows:

An act in relation to the house of correction of the city and county of San Francisco.

Maintenance of house of correction authorized.

Section 1. The board of supervisors of the city and county of San Francisco are hereby authorized to maintain and support in said city and county the institution now existing therein, and known as the house of correction, and to make additions thereto as the same may be required, and also to make all proper rules and regulations for the discipline, management, and employment of persons committed to said house of correction by any court of said city and county.

Sec. 2. In making rules and regulations, as provided in the preceding section, the board of supervisors shall endeavor, as far as possible, to prevent crime, reform prisoners, and make the house of correction self-supporting.

Imprisonment in house.

Sec. 3. All persons appearing for sentence in the police judge's court, the city criminal court, or the municipal criminal court of the city and county of San Francisco, who might be sentenced to imprisonment in the county jail or in the State prison, may, instead thereof, be by the proper

court sentenced to imprisonment in the house of correction in said city and county, subject, however, to the provisions of the next section; and no person shall be sentenced to imprisonment in the house of correction except under the provisions of this act.

Term of sentence—Prohibition of certain persons to imprisonment in the house.

Sec. 4. No person shall be sentenced to imprisonment in the house of correction for a shorter or a longer term than that for which he might be sentenced in the county jail or in the State prison, and in no case whatever for a shorter term than three months, nor a longer term than three years. No person who might be sentenced to imprisonment in the State prison shall be sentenced to imprisonment in the house of correction if he is more than twenty-five years of age, if he has been once before convicted of a felony; or twice before convicted of petit larceny, nor unless, in the opinion of the court, imprisonment in the house of correction will be more for his interest than imprisonment in the State prison, and equally for the interest of the public. The fact of a previous conviction may be found by the court upon evidence introduced at the time of sentence.

Prisoners made to work.

Sec. 5. Persons imprisoned in the house of correction may be put to work on the public works and other property of the city and county of San Francisco, or may be employed at any other work, as the board of supervisors of said city and county may direct. And the said board of supervisors may, so far as a due regard to economy will permit, provide for the learning of trades by persons whose terms of imprisonment in said house of correction are of sufficient length, and who have the capacity requisite therefor, and will work industriously thereat.

Duty of superintendent.

Sec. 6. The superintendent shall give his personal attention to the duties of his office, and shall reside at the house of correction, and the board of supervisors shall provide therein room and board for him, and for the subordinates whose presence may be required in and about said house.

Repeal.

Sec. 7. The third section of an act entitled "An act to utilize the prison labor and govern the house of correction of the city and county of San Francisco," approved March thirty-first, eighteen hundred and seventy-six, and all acts and parts of acts so far as they are inconsistent with this act, are hereby repealed; provided, that all offenses committed before this act takes effect shall be inquired of, prosecuted, and punished in the same manner as if this act had not been passed.

House deemed to be county jail.

Sec. 8. Every person who shall, at the time of the passage of this act, be confined in the house of correction under or by virtue of a sentence of imprisonment in the county jail, may remain in the house of correction till his term of imprisonment shall expire, and, so far as relates to him, the house of correction shall be deemed to be the county jail, and he shall be in the charge and keeping of the superintendent, who shall have the same power over him that the sheriff might exercise if he was in fact in the county jail. While any such person shall be in charge of the superintendent as above provided, the sheriff shall be under no responsibility in regard to him; but nothing herein shall prevent the sheriff from removing at any time any such person from the house of correction to the county jail. Nothing in this act shall be construed to abolish or in any way to interfere with the government or control of the county or branch

county jails of said city and county by the sheriff of said city and county.

Sec. 9. This act shall take effect in thirty days from and after its passage. [Approved April 1, 1878; 1877-8, 953.]

INFANCY.

Act to prevent sale of liquors to minors. See post, p. 578.

An act for the incorporation of societies for the prevention of cruelty to children.

Section 1. Any five or more persons of full age, a majority of whom shall be citizens and residents within the State, who shall desire to associate themselves together for the purpose of preventing cruelty to children, may make, sign, and acknowledge, before any person authorized to take acknowledgments of deeds of this State, and file in the office of the secretary of State, and also in the office of the clerk of the county in which the business of the society is to be conducted, a certificate in writing, in which shall be stated the name or title by which said society shall be known in law, the particular business and objects of such society, the number of trustees, directors, or managers, to manage the same, and the names of the trustees, directors, or managers of the society for the first year of its existence; but such certificate shall not be filed unless the written consent and approbation of the district judge of the district in which the place of business or principal office of such society shall be located, be indorsed on such certificate.

Sec. 2. Upon filing the certificate as aforesaid, the persons who shall have signed and acknowl-

edged such certificate, and their associates and successors, shall thereupon, by virtue of this act, be a body politic and corporate by its name stated in such certificate, and as such shall have power:

First—To have perpetual succession by its corporate name.

Second—To sue and be sued, complain and defend, in any court of law or equity.

Third—To make and use a common seal, which may be affixed by making an impression directly in the paper, and alter the same at pleasure.

Fourth—To appoint such officers, managers, and agents, as the business of the corporation may require.

Fifth—To make by-laws, not inconsistent with the laws of this State or of the United States, for the management of its property and the regulation of its affairs.

Sixth—To contract and be contracted with.

Seventh—To take and hold by gift, purchase, grant, devise, or bequest, any property, real or personal, and the same to dispose of at pleasure. But such a corporation shall not, in its corporate capacity, hold real estate the yearly income derived from which shall exceed the sum of fifty thousand dollars.

Eighth—To exercise any corporate powers necessary for the exercise of the powers above enumerated and given.

Sec. 3. Any society so incorporated may prefer a complaint before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children, and may aid in bringing the fact before such court or magistrate in any proceeding taken.

Sec. 4. All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid the society so incorporated, its officers, members, and agents, in the enforcement of all laws

which now are or may hereafter be enacted relating to or affecting children.

Sec. 5. The provisions of this act shall not extend or apply to any association or individuals who shall, in the certificate filed as hereinabove provided, use or specify a name or style the same, or substantially the same, as that of any previously existing incorporated society in this state. [In effect April 3, 1876. Stats. 1875-6, p. 830.]

Fines to be paid to society: See next act, sec. 5.

An act relating to children.

Persons selling or apprenticing children for immoral purpose.

Section 1. Any person, whether as parent, relative, guardian, employer, or otherwise, having the care, custody or control of any child under the age of sixteen years, who shall exhibit, use, or employ, or who shall in any manner or under any pretense sell, apprentice, give away, let out, or otherwise dispose of any such child to any person, under any name, title or pretense, in or for the vocation, occupation, service, or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, acrobat, contortionist, or rider, in any place whatsoever, or for or in any obscene, indecent, or immoral purpose, exhibition, or practice whatsoever, or for or in any mendicant or wandering business whatsoever, or for or in any business, exhibition, or vocation injurious to health or dangerous to the life or limb of such child; or who shall cause, procure, or encourage any such child to engage therein—shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred and fifty dollars, or by imprisonment in the coun-

ty jail for a term not exceeding six months, or by both such fine and imprisonment; provided, that nothing in this section contained shall apply to or affect the employment or use of any such child as a singer or musician in any church, school, or academy, or the teaching or learning of the science or practice of music; or the employment of any such child as a musician at any concert or other musical entertainment, on the written consent of the mayor of the city or president of the board of trustees of the town where such concert or entertainment shall take place.

Offense, how punished.

Sec. 2. Every person who shall take, receive, hire, employ, use, exhibit, or have in custody any child under the age and for any of the purposes mentioned in the preceding section, shall be guilty of a like offense, and punished by a like punishment as therein provided.

Court to commit child to asylum.

Sec. 3. When, upon examination before any court or magistrate, it shall appear that any child, within the age previously mentioned in this act, was engaged or used for or in any business, or exhibition, or vocation, or purpose designated, and as mentioned in this act, and when upon the conviction of any person having the custody of a child of a criminal assault upon it, the court or magistrate before whom such conviction is had shall deem it desirable for the welfare of such child that the person so convicted should be deprived of its custody thereafter, such court or magistrate may commit such child to any orphan asylum, society for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now is or hereafter may be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children.

Causing child to suffer—Penalty for.

Sec. 4. Whoever shall willfully cause or permit any child to suffer or who shall inflict thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, shall willfully cause or permit the life or limb of such child to be endangered, or the health of such child to be injured, or any person who shall willfully cause or permit such child to be placed in such situation that its life or limb may be endangered, or its health shall be likely to be injured, shall be guilty of a misdemeanor.

Fines, how appropriated.

Sec. 5. All fines, penalties, and forfeitures imposed and collected in any county of this State, under the provisions of this and every act passed, or which may be passed, relating to or affecting children, in every case where the prosecution was instituted or conducted by a society incorporated pursuant to the provisions of chapter five hundred and forty-nine of the statutes of 1875-6, approved April third, eighteen hundred and seventy-six, being an act entitled "An act for the incorporation of societies for the prevention of cruelty to children," shall, except where otherwise provided, inure to such society in aid of the purposes for which it was incorporated.

Sec. 6. This act shall take effect immediately. [Approved March 30, 1878; 1877-8, 813.]

An act for the protection of children, and to prevent and punish certain wrongs to children.

Minor not to enter saloon—Penalty.

Section 1. No minor, under the age of sixteen years, shall be admitted at any time to, or permitted to remain in, any saloon or place of entertainment where any spirituous liquors, or wines,

or intoxicating or malt liquors are sold, exchanged, or given away, or at places of amusement known as dance-houses and concert saloons, unless accompanied by parent or guardian. Any proprietor, keeper, or manager of any such place who shall admit such minor to, or permit him or her to remain in any such place, unless accompanied by parent or guardian, shall be guilty of a misdemeanor.

Begging restrained—Penalty for violation.

Sec. 2. Every person having the care, custody, or control of any child under the age of sixteen years shall restrain such child from begging, whether actually begging or under the pretext of peddling. Any person offending against this section shall be arrested and brought before a court or magistrate, and for the first offense shall be reprimanded, and for each subsequent offense shall be guilty of a misdemeanor.

Penalty for begging.

Sec. 3. Any child, apparently under the age of sixteen years, that comes within any of the following descriptions named:

1. That is found begging, or receiving or gathering alms (whether actually begging, or under the pretext of selling or offering for sale anything), or being in any street, road, or public place for the purpose of so begging, gathering, or receiving alms.

2. That is found wandering and not having any house or settled place of abode, or proper guardianship, or visible means of subsistence;

3. That is found destitute, either being an orphan, or having a vicious parent who is undergoing penal servitude or imprisonment;

4. That frequents the company of reputed thieves or prostitutes, or houses of prostitution or assignation, or dance-houses, concert-saloons, theaters, and varieties, or places specified in the first

section of this act, without parent or guardian, shall be arrested and brought before a court or magistrate;

—When, upon examination before a court or magistrate, it shall appear that any such child has been engaged in any of the aforesaid acts, or comes within any of the aforesaid descriptions, such court or magistrate, when it shall deem it expedient for the welfare of the child, may commit such child to an orphan asylum, society, for the prevention of cruelty to children, charitable or other institution, or make such other disposition thereof as now or may hereafter be provided by law in cases of vagrant, truant, disorderly, pauper, or destitute children.

Child not to be confined.

Sec. 4. No child under restraint or conviction, apparently under the age of sixteen years, shall be placed in any prison or place of confinement, or in any courtroom, or in any vehicle for transportation to any place, in company with adults charged with or convicted of crime, except in the presence of a proper official.

Sec. 5. This act shall take effect immediately. [Approved March 30, 1878; 1877-8, 812.]

INTERPRETERS.

An act to authorize the appointment of an interpreter of the Italian language and dialects, in criminal proceedings, in cities and cities and counties of one hundred thousand inhabitants.

Section 1. In all cities and cities and counties of over one hundred thousand inhabitants, where an interpreter of the Italian language is necessary, it

shall be the duty of the mayor and police judge of such city, or city and county, and of the judge of the superior court of said city and county, or of the county in which said city is situated, or where there are more judges than one, then it shall be the duty of the presiding judge of said superior court and the presiding judge of the police court and the mayor, to appoint an interpreter of the Italian language, who must be able to interpret the Italian language and dialects into the English language, to be employed in criminal proceedings when necessary in said cities, or cities and counties. [Amendment approved March 9, 1895; Stats. 1895, 37.]

Sec. 2. The said interpreter shall receive a salary of fifteen hundred dollars per annum, which shall be paid out of the General Fund of such city, or city and county.

Sec. 3. This act shall not repeal any act heretofore made and now in force for the appointment of interpreters, except so much of any Act which may conflict with this Act in the appointment of Italian interpreters. [In effect March 12th, 1885.]

An Act in relation to interpreters before Grand Juries.

Section 1. The grand jury or district attorney may require by subpoena, the attendance of any person before the grand jury as interpreter; and the interpreter may be present at the examination of witnesses before the grand jury. [In effect March 23, 1872. Stats. 1871-2, 540.]

Penal Code.—49

INTOXICATING LIQUORS.

An Act to prevent the sale of intoxicating liquors to minor children.

Section 1. Every person who sells or gives, or causes to be delivered, to any minor child, male or female, under the age of eighteen years, any intoxicating drink in any quantity whatsoever, or who, as proprietor or manager of any saloon or public house where intoxicating liquors are sold, permits any such minor child under the age of eighteen years to visit said saloon or public house where intoxicating liquors are sold, for the purpose of gambling, playing cards, billiards, pool, or any game of chance, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than three hundred dollars, and in default of payment of said fine shall be imprisoned in the county jail for a period of not less than one hundred days.

Sec. 2. All acts in conflict with this act are hereby repealed.

Sec. 3. This act shall take effect immediately upon its passage. [Approved March 11, 1891; Stats. 1891, 91.]

See former act on this subject in Stats. 1871-2, 231.

An Act to prevent the sale of intoxicating liquors to persons addicted to the inordinate use of intoxicating liquors.

To prohibit furnishing liquor to person inordinately using it.

Section 1. Any person who, after receiving no-

tice that a person named in said notice is addicted to the inordinate use of intoxicating liquors, should the person named in said notice be so addicted, shall thereafter, within a period of twelve months, furnish to said person so addicted to the inordinate use of intoxicating liquors any spirituous liquors, wines, or intoxicating or malt liquors, shall be guilty of a misdemeanor, and punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars, or by both such fine and imprisonment. Said notice shall be in writing, and may be given by any adult member of the family of said person so addicted to the inordinate use of intoxicating liquors, or by any adult relative of said person so addicted to the inordinate use of said intoxicating liquors.

Not to apply to physicians.

Sec. 2. The provisions of this act shall not prohibit any regularly licensed physician from furnishing or prescribing said liquors in case of sickness.

Sec. 3. This act shall take effect from and after its passage. [Approved March 19, 1889; 1889, 352.]

An Act to prevent the sale of intoxicating liquors in the immediate vicinity of soldiers' homes.

Section 1. Every person who sells or gives away any ale, beer, wine, cider, or other intoxicating liquors, within one and one-half miles outside of the boundary line of the lands occupied by any home, retreat, or asylum for disabled volunteer soldiers, or soldiers and sailors, which has been or may hereafter be established by the government of the United States, within the state of California, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than

twenty-five dollars nor more than one hundred dollars, and in addition to such fine shall be imprisoned in the county jail thirty days; and upon the conviction of the owner or keeper thereof, the place wherein such intoxicating liquors shall have been sold or given away shall be, by order of the court wherein such conviction is made, within ten days thereafter, shut up and abated as a nuisance. And it is hereby made the duty of the district attorney of the county in which any such institution is or may be located to prosecute all offenders against the provisions of this act.

Sec. 2. This act shall take effect from and after its passage. [Approved March 26, 1895; Stats. 1895, 161.]

An Act to prevent the sale of intoxicating beverages on election days.

Section 1. It shall not be lawful for any person or persons keeping a public house, saloon, or drinking place, either licensed or unlicensed, to sell, give away, or furnish spirituous or malt liquors, wine, or any other intoxicating beverages, on any part of any day set apart, or to be set apart, for any general or special election by the citizens in any election district or precinct in any of the counties of the state where an election is in progress, during the hours when by law, in said district or precinct, the election polls are required to be kept open.

Sec. 2. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor. [In effect March 7, 1874. Stats. 1873-4, 297.]

**An Act to prohibit the sale of intoxicating liquors
in the State capitol building.**

Section 1. Any person or persons having in charge or control the state capitol building, and allowing the same, or any portion thereof, to be used for the sale or distribution in any manner, for profit, of any malt or spirituous liquors, shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than one thousand dollars. [In effect April 16, 1880. Stats. 1880, 80, Ban. Ed. 273.]

**An Act to prohibit the sale of intoxicating liquors
within two miles of the University of California.**

No liquor to be sold within two miles of university.

Section 1. It shall not be lawful for any person or persons to keep or expose for sale, or sell, or give, or permit others to take, for a consideration, directly or indirectly, any malt, spirituous, or other alcoholic liquors, upon or within two miles of the grounds belonging and adjacent to the University of California in Alameda county Penalty.

Sec. 2. Any violation of section first of this act shall be deemed a misdemeanor, punishable by fine, or imprisonment in the county jail of Alameda county, or both. The fine to be not less than fifty dollars nor more than one hundred dollars; and the imprisonment to be not less than thirty nor more than ninety days for each offense.

Sec. 3. This act shall take effect from and after the first day of February, eighteen hundred and seventy-four. [Approved December 23, 1873; 1873-4, 12.]

LARCENY.

An Act to more fully define the crime of larceny.

Section 1. Every person who shall convert any manner of real estate, of the value of fifty dollars and upwards, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of grand larceny, and, upon conviction thereof, shall be punishable by imprisonment in the state prison for any term not less than one year nor more than fourteen years.

Sec. 2. Every person who shall convert any manner of real estate, of the value of under fifty dollars, into personal property, by severing the same from the realty of another, with felonious intent to and shall so steal, take, and carry away the same, shall be deemed guilty of petit larceny, and, upon conviction thereof, shall be punishable by imprisonment in the county jail for a period not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. [Approved March 6, 1872. Stats. 1871-2, 282.]

An Act supplementary to an Act entitled "An Act concerning crimes and punishments," passed April sixteenth, eighteen hundred and fifty.

Section 1. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry from any mining claim, tunnel, sluice, undercurrent, riffle box, or sulphurate machine, any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of

grand larceny, and upon conviction thereof, shall be punished by imprisonment in the state prison for any term of not less than one year nor more than fourteen years. [In effect March 20, 1872. Stats. 1871-2, 435.]

LODGING HOUSES.

An Act concerning lodging houses and sleeping apartments.

Section 1. Every person who owns, leases, lets, or hires, to any person or persons, any room or apartment in any building, house or other structure, within the limits of any incorporated city, or city and county, within the state of California, for the purpose of a lodging or sleeping apartment, which room or apartment contains less than five hundred cubic feet of space, in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty (50) dollars or more than five hundred (500) dollars, or by imprisonment in the county jail, or by both such fine and imprisonment.

Sec. 2. Any person or persons found sleeping or lodging, or who hires or uses for the purpose of sleeping in, or lodging in, any room or apartment, which contains less than five hundred (500) cubic feet of space in the clear, for each person so occupying such room or apartment, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten (10) or more than fifty (50) dollars, or by both such fine and imprisonment.

Sec. 3. It shall be the duty of the chief of police (or such other person to whom the police powers

of a city are delegated) to detail a competent and qualified officer or officers of the regular force to examine into any violation of any of the provisions of this act, and to arrest any person guilty of any such violation.

Sec. 4. The provisions of this act shall not be construed to apply to hospitals, jails, prisons, insane asylums, or other public institutions.

Sec. 5. All acts or parts of acts in conflict with the provisions of this act are hereby repealed. [In effect April 3, 1876. Stats. 1875-6, 759.]

LUMBER-MANUFACTURERS.

An Act to protect lumber manufacturers.

Section 1. Every person who maliciously drives into, or places within any saw-log, shingle-bolt, or other wood, any iron, steel, or other substance sufficiently hard to injure saws, knowing that the said saw-log, shingle-bolt, or other wood, is intended by the owner thereof to be manufactured into any kind of lumber, is guilty of a felony, and shall be punished by imprisonment in the state prison not less than one nor more than five years. [In effect February 9, 1876. Stats. 1875-6, 32.]

MANUFACTURED GOODS.

An Act to prevent fraud and imposition in the matter of stamping and labeling produce and manufactured goods.

Penalty for falsely labeling produce and manufactured goods.

Section 1. Any person, firm, or corporation, engaged in the production, manufacture, or sale of any article of merchandise made, or partly made, in this state, who or which shall by any imprint, label, trade-mark, tag, stamp, or other inscription or device, placed or impressed upon such article, or upon the cask, box, case, or package containing the same, misrepresent or falsely state the kind, character, or nature of the labor employed or used, or misrepresent or falsely state the extent of the labor employed or used, or misrepresent or falsely state the number or kind of persons exclusively employed or used, or misrepresent or falsely state that a particular or distinctive class or character of laborers was wholly and exclusively used or employed, when, in fact, another class, or character, or distinction of laborers was used or employed, either jointly or in any wise supplementary to such exclusive class, character, or distinction of laborers, in the production or manufacture of the article to which such imprint, label, trade-mark, tag, stamp, or other inscription or device is affixed, to which, or upon the cask, box, case, or package containing the same, such imprint, label, trade-mark, tag, stamp, or other inscription or device is affixed, or upon which it is impressed, is guilty of a misdemeanor, and on conviction thereof is punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than twenty days nor for more

than ninety days, or by both such fine and imprisonment.

Sec. 2. This act shall take effect from and after its passage. [Approved March 4, 1887; 1887, 17.]

MASTER AND SERVANT.

An Act to protect the wages of labor and the salaries and fees of subordinate officers.

Section 1. Every person who employs laborers upon the public works, and who takes, keeps, or receives any part or portion of the wages due to such laborers from the state or municipal corporation for which such work is done, is guilty of a felony.

Sec. 2. Every officer of the State, or any county, city, or township therein, who keeps or retains any part or portion of the salary or fees allowed by law to his deputy, clerk, or subordinate officer, is guilty of a felony. [In effect April 1, 1872. Stats. 1871-2, 951.]

OFFICERS.

Retention of part of salary of deputy by officer, see ante, title Master and Servant.

An Act in relation to the intoxication of officers.

Section 1. Any officer of a town, village, city, county, or state, who shall be intoxicated while in discharge of the duties of his office, or by reason of intoxication is disqualified for the discharge of, or neglects his duties, shall be guilty of a misde-

meanor, and on conviction of such misdemeanor shall forfeit his office; and in such case the vacancy occasioned thereby shall be filled in the same manner as if such officer had filed his resignation in the proper office, and it had been accepted by the proper authority; provided, such acceptance shall have been necessary to make the office vacant. [In effect April 15, 1880. Stats. 1880, 77, Ban. Ed. 265.]

OLEOMARGARINE.

Act to prevent deception in manufacture and sale of butter, see ante, 517.

An Act to prevent the sale or disposition, as butter, of the substance known as "oleomargarine," or "oleomargarine butter," and when "oleomargarine," or "oleomargarine butter," is sold or disposed of, requiring notice thereof to be given.

Every package must be branded.

Section 1. Every person or corporation who shall manufacture for sale, or who shall offer or expose for sale, any article or substance in semblance of butter, not the legitimate product of the dairy, and not made exclusively of milk or cream, or into which the oil or fat of animals, not produced from milk, enters as a component part, or into which the oil or fat of animals, not produced from milk, has been introduced to take the place of cream, shall distinctly stamp, brand, or mark in some conspicuous place upon every package of such article or substance the word "oleomargarine," in plain letters, not less than one-fourth of one inch square each; and in case of retail sale of such article or substance

in parcels or otherwise, the seller shall, in all cases, deliver therewith to the purchaser a printed label, bearing the plainly printed word "oleomargarine," the said word to be printed with type each letter of which shall not be less than one-fourth of one inch square.

Printed notice to be posted.

Sec. 2. Every person dealing, whether by wholesale or retail, in the article or substance described in section one of this act, and every hotel or restaurant keeper, or boarding-house keeper, in whose hotel, or restaurant, or boarding-house such article or substance is used, shall continuously keep conspicuously posted up, in not less than three exposed positions in and about their respective places of business, a printed notice in the following words, viz.: "Oleomargarine sold here;" the said notice to be plainly printed, with letters not less than two inches square each. And each and every hotel keeper and restaurant keeper, boarding-house keeper, or proprietor of other places where meals are furnished for pay, who may use in their respective places of business any of the article or substance described in the first section of this act, shall, upon the furnishing of the same to his guests or customers, if inquiry is made, cause each and every guest or customer to be distinctly informed that the said article is not butter, the genuine production of the dairy, but is "oleomargarine."

Penalty for violation.

Sec. 3. Every person or director, trustee, officer, or agent of any corporation who may violate any provision of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than five hundred dollars, or by imprisonment for not more than three months, or by both such fine and imprisonment; and it shall be the

duty of the court trying said offense to order the payment of one-half of the fine imposed to the person giving the information upon which the prosecution was based and the conviction had, and such fine may be collected by execution as in civil causes.

Sec. 4. All acts or parts of acts in conflict with this act are hereby repealed. [Approved March 1, 1883; 1883, 20.]

The former act on this point is as follows:

An Act to prevent the sale of oleomargarine under the name of and under pretense that said commodity is butter.

Selling oleomargarine as butter, misdemeanor.

Section 1. Every person who sells, or keeps for sale, or offers for sale, or otherwise disposes of any quantity of oleomargarine, under the name of or under the pretense that the same is butter, or shall keep for sale or manufacture any quantity of oleomargarine, without branding the same, or the package in which it is contained, with the word "oleomargarine," shall be deemed guilty of a misdemeanor, and on conviction thereof before a court of competent jurisdiction shall be punishable by imprisonment in the county jail for a term not less than fifty nor more than two hundred days, or by fine not less than fifty nor more than two hundred dollars, or by both such fine and imprisonment.

Sec. 2. This act shall take effect and be in force from and after its passage. [Approved March 26, 1878; 1877-8, 535.]

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OLIVE OIL.

An Act to regulate the sale of imitation olive oil, and to repeal an act entitled "An act to regulate the sale of olive oil," approved March 10, 1891.

Section 1. Section one of said act is hereby amended to read as follows:—

Section 1. That for the purpose of this act every article, substance, or compound, or oil other than that extracted solely from the fruit of the olive tree, made in the semblance of olive oil extracted solely from the fruit of the olive tree, is hereby declared to be imitation olive oil.

Sec. 2. Each person who manufactures imitation olive oil shall place upon every bottle, can, or other vessel containing such imitation oil, a label, with the words "imitation olive oil" printed thereon in capital letters, in a clear and durable manner, in the English language, in plain type, designated and known as twenty-four-point letter type (two-line pica), of a Gothic face; said label shall also state plainly the name and address of the manufacturer or compounder, the name and place where manufactured and put up, and also the names and actual percentages of the different ingredients contained in each bottle, can, or vessel.

Sec. 3. No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any imitation olive oil, unless the same be marked as provided in section two of this act, and no carrier shall knowingly receive, for the purpose of forwarding or transporting, any imitation olive oil, unless it shall be marked as hereinbefore provided, consigned, and by the carrier receipted for, as imitation olive oil; provided, that this act shall

not apply to any goods in transit between foreign countries and across the State of California.

Sec. 4. No person shall knowingly have in his possession or under his control any imitation olive oil, unless the bottle, can, or vessel, or other package containing the same, be clearly marked as provided in section two of this act.

Sec. 5. No person, by himself or another, shall knowingly sell or offer for sale imitation olive oil under the name of or under the pretense that the same is pure olive oil; and no person, by himself or another, shall knowingly sell any imitation olive oil unless he shall inform the purchaser at the time of sale that the same is imitation olive oil, and shall deliver to the purchaser at the time of sale a statement, clearly printed in the English language, which shall refer to the article sold, and which shall contain, in plain type, designated and known as twenty-four-point letter type (two-line pica), of a Gothic face, in capital letters, the words "imitation olive oil," and shall give the name and place of business of the manufacturer or compounder.

Sec. 6. Every person having possession or control of any imitation olive oil, which is not marked as required by the provisions of this act, shall be presumed to have known, during the time of such possession or control, that the same was imitation olive oil.

Sec. 7. No person shall expose for sale any oil bearing the semblance of olive oil, manufactured out of the state, and represent that it is manufactured in this state, nor shall offer for sale any such oil upon the receptacle of which is any cut, design, or mark intended to convey the belief that such is manufactured in this State.

Sec. 8. Whoever shall violate any of the provisions or sections of this act shall be deemed guilty of a misdemeanor, and shall, upon convic-

tion thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than six months, or by both fine and imprisonment, as the court may direct.

Sec. 9. It shall be the duty of the state board of horticulture and the state analyst to enforce the provisions of this act.

Sec. 10. An act entitled "An act to regulate the sale of olive oil," approved March tenth, eighteen hundred and ninety-one, is hereby repealed. [Approved March 23, 1893; Stats. 1893, 210.]

The act repealed by this statute is as follows:

An act to regulate the sale of olive oil.

Section 1. Every manufacturer or dealer in olive oil shall place upon every bottle or can filled with olive oil, and exposed or offered for sale as such, a label stating clearly the name and address of the manufacturer or dealer, and the place of manufacture, and shall file with the state board of horticulture a copy of said label, accompanied by an affidavit that it is pure, and that this act has been complied with.

Sec. 2. Whoever adulterates olive oil, sells or keeps for sale oil not olive oil, and exposed or offered for sale as olive oil, within the state of California, is guilty of a misdemeanor, and upon conviction thereof before any justice of the peace of any township of legal jurisdiction, shall be fined in a sum not less than fifty dollars, nor exceeding one hundred dollars, and cost of the action, for each offense, or may be imprisoned not less than fifty days nor more than one hundred days, or by such fine and imprisonment as the judgment of the court may direct.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 10, 1891; Stats. 1891, 46.]

POISONS.

An Act to regulate the sale of certain poisonous substances.

Section 1. It shall be unlawful for any person to retail any of the substances poisonous, and by reason thereof dangerous to human life, without distinctly labeling the bottle, box, vessel, or package, and the wrapper or cover thereof in which such substance is contained, with the common or usual name thereof, together with the word "poison," and the name and place of business of the seller. Nor shall it be lawful for any person to retail any of the substances enumerated in either of said schedules to any person, unless, on rue inquiry, it is found that the person receiving the same is aware of its poisonous character, and that it is to be used for a legitimate purpose.

Sec. 2. It shall be unlawful for any person to retail any of the substances enumerated herein, unless, before delivering the same, such person shall make, or cause to be made, in a book kept for that purpose only, an entry stating the date of the sale, the name and address of the purchaser, the name and quantity of the substance sold, the purpose for which it is stated by the purchaser to be required, and the name of the dispenser. The book required by this Act shall be always open to inspection by the proper authorities. It shall also be the duty of the person dispensing any of the substances enumerated in either of said schedules to ascertain, by due inquiry, whether the name and address given by the person receiving the same are his true name and address, and for that purpose may require such person to be identified.

Sec. 3. Any person who shall dispense any of the substances enumerated in either of said schedules without complying with the regulations herein prescribed, shall, for every such offense, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; provided, that nothing in this Act shall be so construed as to apply to the prescriptions of any physician authorized to practice medicine under the laws of this State.

Sec. 4. This Act shall take effect and be in force from and after June first, eighteen hundred and eighty.

Schedule "A."

Arsenic, corrosive sublimate, hydrocyanic acid, cyanite of potassium, strychnia, essential oil of bitter almonds, opium, aconite, belladonna, conium, nux vomica, henbane, tansy, savin, ergot, cotton root, digitalis, chloroform, chloral hydrate, and all preparations, compounds, salts, extracts, or tinctures of such substances, except preparations of opium containing less than two grains to the fluid ounce.

Schedule "B."

White precipitate, red precipitate, red and green iodides of mercury, colchicum, cantharides, oxalic acid, croton oil, sulphate of zinc, sugar of lead, carbolic acid, sulphuric acid, muriatic acid, nitric acid, phosphorus, and all preparations, compounds, salts, extracts, or tinctures of such substances. [Approved April 16, 1880. Stats. 1880, p. 102, Ban. Ed. 341.]

POLICE.

An Act to create a police relief, health, and life insurance and pension fund in the several counties, cities and counties, cities, and towns of the State.

[Approved March 4, 1889; 1889, 56.]

Creation of police relief and pension fund.

Section 1. The chairman of the board of supervisors of the county, city and county, city, or incorporated town in which there is no board of police commissioners, the treasurer of the county, city and county, or incorporated town, and the chief of police, and their successors in office, are hereby constituted a board of trustees of the police relief or pension fund of the police department, to provide for the disbursements thereof, as hereinafter directed, which board shall be known as the "Board of Police Pension Fund Commissioners"; provided, however, that where there is in any county, city and county, city, or town, a board of police commissioners, then such body shall constitute said board of trustees of the police relief and pension fund of the police department. [Amendment approved March 31, 1891; Stats. 1891, 469.]

Organization of board of.

Sec. 2. They shall organize as such board by choosing one of their number as chairman, and by appointing a secretary. The treasurer of the county, city and county, city, or town, shall be ex officio treasurer of said fund. Such board of trustees shall have charge of and administer said fund, and to order payments therefrom in pur-

suance of the provisions of this act. They shall report annually, in the month of June, to the board of supervisors, or other governing authority of the county, city and county, city, or incorporated town, the condition of the police relief and pension fund, and the receipts and disbursements on account of the same, with a full and complete list of the beneficiaries of said fund and the amounts paid them. [Amendment approved March 31, 1897; Stats. 1897, ch. 57.]

Who entitled to receive pensions.

Sec. 3. Whenever any person at the taking effect of this act, or thereafter shall have been duly appointed or selected and sworn, and have served for twenty years, or more, in the aggregate, as a member, in any capacity or any rank whatever, of the regularly constituted police department of any such county, city and county, city, or town which may hereafter be subject to the provisions of this act, said board may, if it see fit, order and direct that such person after becoming sixty years of age be retired from further service in such police department, and from the date of the making of such order the service of such person in such police department shall cease, and such person so retired shall thereafter, during his lifetime, be paid from such fund a yearly pension equal to one-half of the amount of salary attached which he may have held in said police department for the period of one year next preceding the date of such retirement. [Amendment approved March 9, 1897; Stats. 1897, ch. 57.]

When may be retired.

Sec. 4. Whenever any person, while serving as a policeman in any such county, city and county, city, or town, shall become physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duty as such policeman, said board may, upon his

written request, or without such request, if it deem it to be for the good of said police force, retire such person from said department, and order and direct that he shall be paid from said fund, during his lifetime, a yearly pension equal to one-half of the amount of salary attached to the rank which he may have held on such police force at the date of such retirement, but on the death of such pensioner his heirs or assigns shall have no claim against or upon such police relief or pension fund; provided, that whenever such disability shall cease such pension shall cease, and such person shall be restored to active service at the same salary he received at the time of his retirement. [Amendment approved March 9, 1897; Stats. 1897, ch. 57.]

Evidence of disability to be filed.

Sec. 5. No person shall be retired, as provided in the next preceding section, or receive any benefit from said fund, unless there shall be filed with said board certificates of his disability, which certificates shall be subscribed and sworn to by said person, and by the county, city and county, city, or town physician (if there be one), and two regularly licensed practicing physicians of such county, city and county, city, or town, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid.

Pension to family.

Sec. 6. Whenever any member of the police department of such county, city and county, city, or town, shall lose his life while in the performance of his duty, leaving a widow, or child or children under the age of sixteen years, then upon satisfactory proof of such facts made to it, such board shall order and direct that a yearly pension, equal to one-third the amount of the salary attached to the rank

which such member held in said police department at the time of his death, shall be paid to such widow during her life, or if no widow, then to the child or children, until they shall be sixteen years of age; provided, if such widow, or child or children, shall marry, then such person so marrying shall thereafter receive no further pension from such fund.

Same.

Sec. 7. Whenever any member of the police department of such county, city and county, city, or town shall, after ten years of service, die from natural causes, then his widow or children, or if there be no widow or children, then his mother or unmarried sisters, shall be entitled to the sum of one thousand dollars from such fund. [Amendment approved March 31, 1891; Stats. 1891, p. 287.]

Re-examination.

Sec. 8. Any person retired for disability under this act may be summoned before the board herein provided for at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of such board with reference thereto; and all members of the police force who may be retired under the provisions of this act shall report to the chief of police of the county, city and county, city, or town where so retired, on the first Mondays of April, July, October, and January of each year; and in cases of great public emergency may be assigned to and shall perform such duty as said chief of police may direct; and such persons shall have no claim against the county, city and county, city, or town, for payment for such duty so performed.

Forfeiture of pension.

Sec. 9. When any person who shall have received any benefit from said fund shall be con-

victed of any felony, or shall become an habitual drunkard, or shall become a non-resident of this state, or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board under this act, in respect to said examination or duty, then such board shall order that such pension allowance as may have been granted to such person shall immediately cease, and such person shall receive no further pension, allowance, or benefit under this act.

Meetings and duties of board.

Sec. 10. The board herein provided for shall hold quarterly meetings on the first Mondays of April, July, October, and January of each year, and upon the call of its president; it shall biennially select from its members a president and secretary; it shall issue warrants, signed by its president and secretary, to the persons entitled thereto of the amount of money ordered paid to such persons from such fund by said board, which warrant shall state for what purpose such payment is to be made; it shall keep a record of all its proceedings, which record shall be a public record; it shall, at each quarterly meeting, send to the treasurer of the county, city and county, city, or town, and to the auditor of such county, city and county, city, or town, a written or printed list of all persons entitled to payment from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The auditor shall thereupon enter a copy of said list upon a book to be kept for that purpose, and which shall be known as the police relief and pension fund book. When such list has been entered by the auditor, he shall transmit the same to the board of supervisors, or other

governing authority of such county, city and county, city, or town, which board or authority shall order the payment of the amounts named therein out of the police relief and pension fund. A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business.

Sec. 11. The board herein provided for shall, in addition to other powers herein granted, have power,—

First—To compel witnesses to attend and testify before it, upon all matters connected with the operation of this act, in the same manner as is or may be provided by law for the taking of testimony before notaries public; and its president, or any member of said board, may administer oaths to such witnesses.

Second—To appoint a secretary, and to provide for the payment from said fund of all its necessary expenses, including secretary hire and printing; provided, that no compensation or emolument shall be paid to any member of said board for any duty required or performed under this act.

Third—To make all needful rules and regulations for its guidance, in conformity with the provisions of this act.

Sec. 12. The board of supervisors, or other governing authority, of any county, city and county, city, or town, shall, for the purposes of said police relief and pension fund hereinbefore mentioned, direct the payment annually, and when the tax levy is made, into said fund, of the following moneys:—

First—Not less than five nor more than ten per centum of all moneys collected and received from licenses for the keeping of places wherein spirituous, malt, or other intoxicating liquors are sold.

Second—One half of all moneys received from taxes or from licenses upon dogs.

Third—All moneys received from fines imposed upon the members of the police force of said county, city and county, city, or town, for violation of the rules and regulations of the police department.

Fourth—All proceeds of sales of unclaimed property.

Fifth—Not less than one-fourth nor more than one-half of all moneys received from licenses from pawnbrokers, billiard-hall keepers, second-hand dealers, and junk stores.

Sixth—All moneys received from fines for carrying concealed weapons.

Seventh—Twenty-five per centum of all fines collected in money for violation of county, city and county, city, or town ordinances.

Eighth—All rewards given or paid to members of such police force, except such as shall be excepted by the chief of police.

Ninth—The treasurer of any county, city and county, city, or town shall retain from the pay of each member of police department the sum of two dollars per month, to be forthwith paid into said police relief and pension fund, and no other or further retention or deduction shall be made from such pay for any other fund or purpose whatever.

Mergement of other insurance funds.

Sec. 13. Any police life and health insurance fund, or any fund provided by law, heretofore existing in any county, city and county, city, or town, for the relief or pensioning of police officers, or their life or health insurance, or for the payment of a sum of money on their death, shall be merged with, paid into, and constitute a part of the fund created under the provisions of this act; and no person who has resigned or been dismissed from said police department shall be entitled to any relief from such fund; provided, that

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any person, who, within one year prior to the passage of this act, has been dismissed from the police department for incompetency or inefficiency, and which incompetency or inefficiency was caused solely by sickness or disability contracted or suffered while in service as a member thereof, and who has, prior to said dismissal, served for twelve or more years as such member, shall be entitled to all the benefits of this act.

Reports.

Sec. 14. On the last day of June of each year, or as soon thereafter as practicable, the auditor of such county, city and county, city, or town shall make a report to the board of supervisors, or other governing authority of such county, city and county, city, or town, of all moneys paid out on account of said fund during the previous year, and of the amount then to the credit of the police relief and pension fund, and all surplus of said fund then remaining in said fund exceeding the average amount per year paid out on account of said fund during the three years next preceding, shall be transferred to and become a part of the general fund of every such county, city and county, city, or town, and no longer under the control of said board, or subject to its order. Payments provided for in this act shall be made quarterly, upon proper vouchers.

Sec. 15. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 16. This act shall take effect from and after its passage.

An Act to provide for the compensation of the chief and captain of the police and police-officers in cities in the State of California containing not less than ten thousand and not exceeding twenty-five thousand inhabitants.

Section 1. The police-officers and captains of police in all cities of this State containing a population of not less than ten thousand and not exceeding twenty-five thousand shall receive a salary of not less than one hundred dollars and not exceeding one hundred and twenty-five dollars per month; and the chief of police in all such cities shall receive a salary of not less than one hundred and twenty-five dollars and not exceeding one hundred and fifty dollars per month.

Sec. 2. The city council of such cities shall, by ordinance, at its first regular meeting in July of each year, fix the compensation of said chief, captain, and police-officers, at a sum not less nor exceeding the amounts herein provided.

Sec. 3. The city clerk of such cities shall draw his warrant upon the city treasurer monthly in favor of the chief of police and each of said captains of police and police-officers for the amount of their monthly salary so fixed by the city council.

Sec. 4. The city treasurer of such cities, out of the funds of such city, shall pay said warrants as other warrants drawn on him are paid.

Sec. 5. All acts and parts of acts inconsistent or in conflict with this act are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its passage. [Approved March 23, 1893; Stats. 1893, p. 280.]

An act to increase the police force of the various cities, and cities and counties, and towns of the State, and to provide for the appointment of such extra police-officers, and for the payment of their salaries.

Section 1. The board of supervisors, board of trustees, or common council of a city, or city and county, or town of this State, of the first, second or fourth classes, are hereby authorized and empowered to increase the police force of their respective cities, and cities and counties, or towns, from time to time, as may be deemed necessary by said common council, board of trustees, or board of supervisors; provided, that the police force in any city or city and county shall not exceed in the aggregate, at any time, one member for every five hundred inhabitants of such city or city and county; provided further, that in cities of the third class the police force shall not exceed in the aggregate, at any time, one member for every one thousand inhabitants of said cities, according to the latest census of the United States; said additional police force to be appointed by the board of police commissioners or other board or authority now by law empowered to appoint police-officers in their respective cities or cities and counties, or towns.

Sec. 2. The salary of additional police-officers hereby authorized shall be of the same amounts for each officer as is now paid by law to the other members of such police force in their respective cities, or cities and counties, or towns; and said additional police-officers shall be paid at the same time and in the same manner and out of the same fund as the other members of their respective police forces are now or shall hereafter be paid.

Sec. 3. The terms "common council," "board of trustees," and "board of supervisors" are hereby declared to include any body or board which, under the law, is the legislative department of the government of any city, or city and county, or town.

Sec. 4. This act shall be in force and effect from and after its passage. [Approved February 24, 1891; Stats. 1891, p. 10.]

An act authorizing and requiring boards or commissions having the management and control of paid police force to grant the members thereof yearly vacations.

Section 1. In every city or city and county of this State where there is a regularly organized paid police force, the board of supervisors, common council, commissions, or other body having the management and control of the same, are authorized and required once in every year to provide for granting each member thereof a leave of absence from active duty for a period of not less than ten nor more than fifteen days. Leaves of absence so granted must be arranged by said board or commission so as not to interfere with the police protection of any such city or city and county, or to impair in any way the efficiency of the department; and leaves of absence granted in case of sickness or in consequence of wounds or injuries received while in the discharge of duty shall not be construed to be or become a part of the leave of absence provided for by this act. No deduction must be made from the pay of any police-officer granted a leave of absence under provisions of this act.

Sec. 2. This act shall take effect immediately. [Approved March 10, 1891; Stats. 1891, p. 47.]

PRIZE FIGHTING.

An act to prohibit prize fighting.

Section 1. It shall be unlawful for any person or persons within this state to engage in what is generally known as prize fighting, with or without gloves, whereby bruising or maiming, or other serious bodily injury, may result to the participants.

Sec. 2. Any and all persons engaging in contests designated in section one of this act, either as principals, aids, seconds, or backers, shall be guilty of felony, and upon conviction shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned in the state prison not less than one year nor more than three years.

Sec. 3. This act shall take effect immediately. [Approved March 9, 1893; Stats. 1893, p. 101.]

PROSTITUTION.

An act to prevent compulsory prostitution of women, and the importation of Chinese or Japanese women for immoral purposes, and to provide penalties therefor.

Section 1. Every person who, within this state, takes by inducement any female, against her will and without her consent, for the purpose of prostitution, is punishable by imprisonment in the state's prison not exceeding five years and a fine not exceeding one thousand dollars.

Sec. 2. Every person who takes any woman unlawfully, and against her will, and by force,

menace, or duress compels her to live with him in an illicit relation, against her consent, or to so live with any other person, is punishable by imprisonment in the State's prison not less than two nor more than four years.

Sec. 3. Every person bringing to or landing within this state any woman born in the empire of China or Japan, or the islands adjacent to the empire of China, with intent to place her in charge or custody of any other person, and against her will to compel her to reside with him, or for the purpose of selling her to any person whatsoever, is punishable by a fine not less than one nor more than five thousand dollars, or by imprisonment in the county jail not less than six nor more than twelve months.

Sec. 4. Any person who shall sell or receive any money or other valuable thing for or on account of his placing in custody any female for the purpose of causing her to cohabit with any other male or persons to whom she is not married, shall be guilty of a misdemeanor.

Sec. 5. Any person who shall purchase or pay any money or other valuable thing for any female for the purpose of prostitution, or for the purpose of placing her for immoral purposes in any house or place against her will, shall be fined not less than one thousand dollars nor more than five thousand dollars, and by imprisonment in the county jail for a period not less than one year, nor more than five years.

Sec. 6. Every person who shall sell any woman, or receive any money or other valuable thing for or on account of his placing in custody for immoral purposes any woman, with or without her consent, is punishable by imprisonment in the state's prison not exceeding five years, and a fine not exceeding one thousand dollars. [Approved March 23, 1893; Stats. 1893, p. 217.]

An act to prevent the placing or keeping or leaving of married women in houses of prostitution, and to punish persons therefor.

Section 1. Any man who by force, fraud, intimidation, threats, persuasions, promises, or any other means, places or leaves, or procures any other person or persons to place or leave, his wife in a house of prostitution, or connives at, consents to, or permits the placing or leaving of his wife in a house of prostitution, or allows or permits his wife to remain therein, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the state prison for not less than three years nor more than ten years.

Sec. 2. In all prosecutions under this act, the wife shall be a competent witness against the husband.

Sec. 3. This act shall take effect immediately. [Approved March 31, 1891; Stats. 1891, p. 285.]

PUBLIC HEALTH.

An Act to protect public health from infection caused by exhumation and removal of the remains of deceased persons.

Disinterring of bodies unlawful without permit.

Section 1. It shall be unlawful to disinter or exhume from a grave, vault, or other burial place, the body or remains of any deceased person, unless the person or persons so doing shall first obtain, from the board of health, health-officer, mayor, or other head of the municipal government of the city, town, or city and county where

the same are deposited a permit for said purpose. Nor shall such body or remains disinterred, exhumed, or taken from any grave, vault, or other place of burial or deposit, be removed or transported in or through the streets or highways of any city, town, or city and county, unless the person or persons removing or transporting such body or remains shall first obtain, from the board of health or health-officer (if such board or officer there be), and from the mayor or other head of the municipal government of the city or town, or city and county, a permit, in writing, so to remove or transport such body or remains in and through such streets and highways.

Permits granted upon what.

Sec. 2. Permits to disinter or exhume the bodies or remains of deceased persons, as in the last section, may be granted, provided the person applying therefor shall produce a certificate from the coroner, the physician who attended such deceased person, or other physician in good standing cognizant of the facts, which certificate shall state the cause of death or disease of which the person died, and also the age and sex of such deceased; and provided further, that the body or remains of the deceased shall be inclosed in a metallic case or coffin, sealed in such manner as to prevent, as far as practicable, any noxious or offensive odor or effluvia escaping therefrom, and that such case or coffin contains the body or remains of but one person, except where infant children of the same parent or parents, or parent and children, are contained in such case or coffin. And the permit shall contain the above conditions and the words: "Permit to remove and transport the body of ————, age —, sex —," and the name, age and sex shall be written therein. The officer of the municipal government of the city or town, or city and county,

granting such permit, shall require to be paid for each permit the sum of ten dollars, to be kept as a separate fund by the treasurer, and which shall be used in defraying expenses of and in respect to such permits, and for the inspection of the metallic cases, coffins, and inclosing boxes herein required; and an account of such moneys shall be embraced in the accounts and statements of the treasurer having the custody thereof.

Misdemeanor.

Sec. 3. Any person or persons who shall disinter, exhume, or remove, or cause to be disinterred, exhumed, or removed, from a grave, vault, or other receptacle, or burial place, the body or remains of a deceased person, without a permit therefor, shall be guilty of a misdemeanor, and be punished by a fine not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. Nor shall it be lawful to receive such body, bones, or remains on any vehicle, car, barge, boat, ship, steamship, steamboat, or vessel, for transportation in or from this state, unless the permit to transport the same is first received, and is retained in evidence by the owner, driver, agent, superintendent, or master of the vehicle, car, or vessel.

Transportation of bodies exhumed without permit—Misdemeanor.

Sec. 4. Any person or persons who shall move or transport, or cause to be moved or transported, on or through the streets or highways of any city or town, or city and county, of this state, the body or remains of a deceased person, which shall have been disinterred or exhumed without a permit, as described in section two of this act, shall be guilty of a misdemeanor, and be punishable as provided in section three of this act.

Reward for information.

Sec. 5. Any person who shall give information to secure the conviction of any person or persons for the violation of the provisions of this act shall be entitled to receive the sum of twenty-five dollars, to be paid from the fund collected from fines imposed and accruing under this act.

Sec. 6. Nothing in this act contained shall be taken to apply to the removal of the remains of deceased persons from one place of interment to another cemetery or place of interment within the same county; provided, that no permit shall be issued for the disinterment or removal of any body unless such body has been buried for two years.

Sec. 7. This act shall take effect and be in force from the thirtieth day after its passage and approval. [Approved April 1, 1878; 1877-8; 1050.]

SCHOOL OF INDUSTRY.

Act relating to commitments to school of industry: See post, p. 646.

Act to prevent evil-disposed persons from coming on grounds of; See post, p. 648.

An Act to establish a school of industry, to provide for the maintenance and management of the same, and to make an appropriation therefor.

[Approved March 11, 1889; 1889, 100.]

Preston School of Industry.

Section 1. There shall be established at or within a convenient distance from Ione City, in the county of Amador, in said state, an educational institution to be designated as the Preston school or industry.-

Appropriation.

Sec. 2. The sum of one hundred and sixty thousand dollars is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, for the purpose of purchasing and preparing grounds for the erection of buildings thereon, for the purchase of the necessary furniture, machinery, and supplies, and for the payment of the current expenses of said school.

State board of prison directors to manage.

Sec. 3. The general government and supervision of said school shall be vested in a board of trustees, consisting of three citizens of the State of California, who shall be appointed by the governor. The members of said board shall hold their offices for the respective terms of two, three and four years, from the first day of July, eighteen hundred and ninety-three, and until their successors shall be appointed and qualified, said respective terms to be designated in their appointments; and thereafter, upon the expiration of such terms, there shall be one of said board appointed, whose term of office shall be continued four years, and until his successor is appointed and qualified. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same. [Amendment approved February 27, 1893; Stats. 1893, p. 39.]

To procure a site.

Sec. 4. The board shall, with all convenient dispatch, select and establish a site at some suitable place in said county for said institution, and procure the right of way for suitable drainage; said site to contain not less than one hundred acres nor more than three hundred acres of land, to have water facilities sufficient for the uses of said school, and for power in operating machinery; the land to be of a quality suitable for gen-

eral farming purposes, and adapted to the cultivation of vines and fruit trees. The land so set apart by said purchase shall hereafter be used exclusively for the occupancy and purposes of said school. It shall be indicated by fixed corners and definite boundaries. A description thereof, together with the deed therefor, shall be filed with the secretary of state at his office within thirty days after the purchase of the same.

Adoption of plans for grounds and buildings.

Sec. 5. Thereafter the board shall cause to be prepared and shall adopt plans for the grounds, buildings, and fixtures necessary for such an institution, of such form, dimensions, and style as to it shall seem best adapted to the purposes thereof. In the preparation of such plans, and in the construction of the buildings, it may employ a competent architect at a reasonable compensation.

Member of board or employee not to be interested in contract.

Sec. 6. No member of the board or employee of the institution shall be interested in any contract or enterprise in connection with said school. [Amendment approved February 27, 1893; Stats. 1893, p. 39.]

Construction of act.

Sec. 7. This act shall be construed as the sole and exclusive act on the subject-matter contained herein, unless specially or otherwise herein provided; and none of the provisions of an act entitled "An Act to regulate contracts on behalf of the state in relation to erections of buildings," approved March twenty-third, eighteen hundred and seventy-six, or any other act, unless herein specially referred to, shall apply to or govern or limit this act, or any of the powers or duties in this act conferred upon said board.

Penal Code.—52

Same.

Sec. 8. Nothing in this act contained shall be so construed as to permit any convict or convicts, undergoing sentence in either of the State prisons of California, to associate with, or to be so employed as to mingle with, any person or persons undergoing commitment in the said school.

Maintaining and conducting school.

Sec. 9. The said school shall be conducted on such plan as to the board may seem best calculated to carry out the intentions of this act, and its inmates shall be subject to military discipline, including daily drill. They shall be clothed in military uniform of such pattern and material as may be prescribed by the board, but under no circumstances shall such inmates be clothed in convict stripes while undergoing commitment in said school. [Amendment approved February 27, 1893; Stats. 1893, p. 39.]

Traveling expenses only allowed board.

Sec. 10. The members of the board shall receive no compensation for their services, but shall be allowed their reasonable expenses incurred while in the discharge of their official duties. The superintendent shall receive a salary, to be fixed by the board, not to exceed three thousand dollars per annum. The military instructor shall receive a salary, to be fixed by the board, not to exceed twelve hundred dollars per annum. The secretary and commissary shall each receive a salary, to be fixed by the board, not to exceed fifteen hundred dollars per annum. The salary of no other officer or employee of the school shall exceed twelve hundred dollars per annum. The power of the board to fix the compensation of the officers and employees, as provided in section twelve of this act, shall be subject to these limitations. [Amendment approved February 27, 1893; Stats. 1893, p. 39.]

Board to elect officers.

Sec. 11. The board shall elect a superintendent, a military inspector, and a secretary. The superintendent and secretary shall give such bonds for the faithful performance of their duties as the board shall determine. The bond of the superintendent shall be for a sum of not less than ten thousand dollars, and that of the secretary of not less than five thousand dollars. The military instructor must be a man who is a good disciplinarian, and skilled in military tactics. He shall receive from the governor a commission, with the rank of major. He shall perform such duties and receive such salary as the board may prescribe. The board shall meet once in three months for the transaction of business. Special meetings may be called by the president when deemed necessary.

Instruction.

Sec. 12. The board shall cause to be organized and maintained a department of instruction for the inmates of said school, with a course of study corresponding, as far as practicable, with the course of study in the public schools of this State, but the course shall not be higher than the course prescribed in grammar schools. They shall adopt a system of government, embracing such laws and regulations as are necessary for the guidance of the officers and employees, for the regulation of the hours of study and labor, for the preservation of order, for the enforcement of discipline and military training, for the preservation of health, and for the industrial training of the inmates. The ultimate purpose of all such instruction, discipline, and industries shall be to qualify the inmates for honorable and profitable employment after their release from the institution, rather than to make said institution self-sustaining. The board shall also determine the number of

officers and employees required, and shall prescribe their duties and fix the amount of their compensation.

Bond of superintendent.

Sec. 13. The superintendent, before entering upon the discharge of his duties, shall make and file with the board an oath that he will faithfully and impartially discharge the duties of his office. Thereupon he shall, subject to the regulations prescribed by the board, be invested with the custody of the lands, buildings, and all other property belonging to and under the control of the said institution. He shall receive for his services a salary not exceeding the sum of three thousand dollars per annum. He shall appoint, except as hereinbefore provided, all officers and employees of said institution, who shall hold office during his pleasure. He shall provide a book in which shall be registered the name, residence, occupation, and religious creed of every boy received into the school; the date of his reception, and the date and condition of his discharge; the names, residence, and occupation of his parents; whether the boy was apprenticed or not, and if so apprenticed, the name, residence, and occupation of the person to whom he was apprenticed. He shall have charge of all persons committed to the institution by any magistrate or court, shall use his best efforts to employ, instruct, discipline, and reform all such persons under his charge, and shall discharge such other duties as the said board may direct, and shall at all times be subject to removal by the board for incapacity, immorality, negligence of duty, or cruelty to the inmates.

Sec. 14. [Repealed, Statutes 1893, p. 39.]

Commitment.

Sec. 15. When any boy under the age of eighteen years shall be found guilty, by a magistrate

or court of competent jurisdiction, of any offense punishable by fine or by imprisonment, or by both, and who, in the opinion of such magistrate or court, would be a fit subject for commitment to the said school, it shall be lawful for the magistrate or court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such boy to the said school for a period not exceeding the time when he shall attain his twenty-first birthday, unless sooner discharged by law, or as in this act provided; but no boy who is under the age of eight years, or who is of unsound mind, shall be committed to the said school. The board shall have authority to make rules reducing, as the reward for good conduct, the time for which such person or persons have been committed. It shall be the duty of all courts and magistrates committing any boy to such school to certify to the superintendent thereof the age of the person so committed as nearly as can be ascertained by testimony taken under oath before such court or magistrate, or in such manner as the court or magistrate may direct.

Approval of commitments.

Sec. 16. Before any commitment, made by a police court, or by a justice of the peace, under this act, shall be executed, it shall be approved by a judge of the superior court of the county in which the police court or justice of the peace has jurisdiction, and his approval indorsed on the warrant of commitment. But if such sentence shall be disapproved, the police court or justice of the peace shall then impose the ordinary sentence prescribed by law.

Dismissals.

Sec. 17. It shall be lawful for the board, whenever it may deem any inmate of said institution to have been so far reformed as to justify his dis-

charge, to give him an honorable dismissal, and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed, and all those who shall have served the full term of their respective sentences, shall thereafter be released from all penalties and disabilities resulting from the offenses or crimes for which they were committed. Upon the final discharge of any inmate as in this section provided, the superintendent shall immediately certify such discharge in writing, and shall transmit the certificate to the magistrate or court by which such inmate or boy was committed. Said magistrate or court shall thereupon dismiss the accusation and the action pending against said person.

Conditional dismissal.

Sec. 18. The board shall have authority also to issue certificates of conditional dismissal and parole to any worthy boy confined in the institution, on the following conditions: "It may bind such boy, by articles of indenture, to any suitable person, who will engage to educate him, and to instruct him in some useful art or trade, or it may return him to his parents, or it may place him under the care of any reputable person who is a citizen and a resident of this state, after such person, parent, guardian, or resident citizen shall have become bound to the said board, with good and sufficient sureties, conditioned on the proper custody, care, education, and moral and industrial training of the said paroled boy. The time of such conditional release shall be made subject to good behavior and continued reformation on the part of the person thus paroled. Any boy who violates his parole, or who becomes habitually disobedient and incorrigible, may be returned to the said school to serve the unexpired term of his sentence, on complaint of his guardian and

the written requisition of the superintendent of the said school, and if received from either of the state prisons may be returned to the same. Every paroled boy who properly observes and obeys the condition of his parole until the date of the expiration of his time of commitment shall be entitled to all the benefits and immunities in this act provided.

Return of boy to committing magistrate.

Sec. 19. Any boy who shall, during the time of his commitment, be found incorrigible, or who shall be an improper subject for detention in said school, may be returned to the magistrate or court by which said boy was committed; and upon written complaint of the board, attested by the superintendent and filed with the original complaint, it shall be lawful for said court or magistrate to enter judgment and pass such sentence as would have been lawful at the time when the offender was first committed to the said school, and if committed from either of the state prisons may be returned to the prison whence received to serve out his unexpired term.

Transfer to, from state prison.

Sec. 20. Any boy under the age of eighteen years, who is undergoing sentence in any state prison in this State (except such as are undergoing a life sentence), and who shall be deemed a fit subject for training in the said school, may, upon recommendation of the state board of prison directors, with the approval of the governor, be transferred to said school for the unexpired period of his sentence, and when honorably discharged from said school, as hereinbefore provided, shall be entitled to such benefits and immunities as are provided for the other inmates of the institution.

Aiding escape.

Sec. 21. Any person who knowingly permits or

who aids any boy to escape from the said school, or knowingly promotes his departure, or conceals him with the intent of enabling such escaped boy to elude pursuit, shall be guilty of a misdemeanor, and shall, upon conviction, be punished according to law. Any fugitive from said institution, or from the parties to whom he is bound out or apprenticed, may be arrested and returned to the institution by any person upon written request or order of the superintendent directed to such person.

Advertising for supplies.

Sec. 22. The board of trustees are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and other staple supplies of the school for any period of time not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for shall be given to the lowest bidder at a public letting thereof, and if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditioned upon the bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a bond, with good and sufficient sureties, in such sum as the board may require, and to their satisfaction, that he will faithfully perform his contract. If the proper officer reject any article as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the school may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof over the contract price from the amount due to the bidder, or charge the same up

against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in one newspaper printed and published in the city and county of San Francisco, in one newspaper printed and published in the city of Sacramento, and in one newspaper printed and published in the county of Amador. If all bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, and may again advertise for such time and in such papers as they see proper for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the State, or they may divide the contract between the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate, or they may segregate the items and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not in the option of the board faithfully complied therewith. [Amendment, approved February 27, 1893; Stats. 1893, p. 39.]

Proclamation of governor.

Sec. 23. When the premises are ready for oc-

cupancy, the board shall certify such fact to the governor, who shall make due proclamation thereof. Thereafter it shall be lawful for any competent magistrate or court to commit juvenile offenders to the institution, as herein provided.

Controller.

Sec. 24. The controller of State is hereby authorized and directed, on requisition of the said board, to draw his warrant on the State treasurer in favor of said board, to pay for the necessary expenditures in the establishment and maintenance of the said school, and the State treasurer is authorized to pay the same from the appropriations provided for in this act.

Effect of other acts in conflict.

Sec. 25. For the purpose of giving practical effect to the provisions of this act, all laws or parts of laws which conflict with the provisions hereof are, for the purposes of this act only, suspended, and hereby made inapplicable to any boy committed to and in the custody of said school.

Sheriff's fees.

Sec. 26. In all proceedings relating to commitments under this act, the fees and compensation of the sheriff and other officers of the court shall be such as are allowed by law for like proceedings and services in criminal cases.

Construction of act.

Sec. 27. This act shall be construed in conformity with the intent as well as with the express provisions hereof, and shall confer upon the board authority to do all those lawful acts, from time to time, which are necessary to promote the prosperity of the institution and the well-being and reformation of its inmates, including the organization of trade schools, the purchase and use of fixed and movable machinery, the erection of necessary buildings for machinery and other purposes, the improvement and management of a

farm, orchard, and garden, the purchase of necessary supplies for the institution, and materials for manufacture, and performance of all other necessary and lawful acts, not otherwise prohibited, which may be required to comply with the purposes of this act; but nothing herein contained shall be so construed as to permit said board to incur any indebtedness or obligation in excess of the appropriations allowed by law for the establishment and maintenance of said school.

Sec. 28. This act shall take effect and be in force from and after its passage.

The act of February 27, 1893, (Stats. 1893, p. 39), amending the act creating the School of Industry, in addition to the provisions incorporated in the above act contained the following:

Sec. 7. For the purpose of preventing any inconvenience arising from the transfer of the power of superintendence and government of said school from the State board of prison directors to said board of trustees, this act shall, after the first day of July, eighteen hundred and ninety-three, confer and devolve upon said board of trustees all the powers, duties, and responsibilities conferred or devolved upon the State board of prison directors, by virtue of any act heretofore passed or that may be passed in relation to said school at the present session of the legislature, and said board of trustees shall, so far as the government and control of said school or any appropriation relating thereto is concerned, become and remain the successors of said State board of prison directors.

Sec. 8. This act shall take effect and be in force from and after the first day of July, eighteen hundred and ninety-three.

An act to appropriate money for the completion of the building of the Preston school of Industry at Ione, and for furnishing and equipping the same.

Section 1. The sum of one hundred and forty-five thousand dollars is hereby appropriated out of any money in the State treasury not otherwise appropriated, to be paid to the State board of prison directors for the purpose of constructing and completing the building of the Preston School of Industry at Ione, and for purchasing furniture, machinery, supplies, and appurtenances therefor, and for such other objects, materials, or purposes as may be necessary or convenient for the use and occupancy of the said Preston School of Industry at Ione.

Sec. 2. The State controller is hereby authorized and directed to draw his warrants in favor of the State board of prison directors for the amount appropriated in section one of this act, and the State treasurer is hereby directed to pay the said warrants.

Sec. 3. This act shall be construed as the sole and exclusive act on the subject-matter contained herein, unless and except specially or otherwise provided for in an act entitled "An act to establish a school of industry, to provide for the maintenance and management of the same, and to make an appropriation therefor," approved March eleventh, eighteen hundred and eighty-nine; and no other act, unless herein specially referred to, shall apply or govern or limit this act, or any of the powers or duties in this act conferred upon the said State board of prison directors.

Sec. 4. This act shall take effect and be in force from and after its passage. [Approved March 3, 1893; Stats. 1893, p. 65.]

An Act to provide for the purchase of additional land for the Preston School of Industry at Ione.

Section 1. The board of trustees of the Preston School of Industry at Ione. Said land to be purchase from Mrs. Emma Rendell, for the State of California, that tract of land contiguous to the tract of land now used as the ranch of the Preston School of Industry at Ione. Said land to be purchased being described as follows: All that certain tract or parcel of land lying and being in Ione Valley, in the county of Amador, in the State of California, and known as the Oak Grove ranch, and bounded and described as follows: Beginning at the northwest corner of the inclosure opposite the Oak Grove house on the road between Ione City and the "Q" ranch, which corner is six chains and forty-six links from the north side of said road measured along the western fence of said inclosure, thence running across "Mule" creek south seventy-five degrees and fifteen minutes east (true bearing) along the northern fence of said inclosure forty-four chains to corner of said fence, thence continuing the said course sixteen chains more, making in all sixty chains to stake marked seven, thence south fourteen degrees forty-five minutes west (true bearing), crossing two branches of the aforesaid road forty chains to a stake marked seven, thence north seventy-five degrees fifteen minutes west (true bearing), descending the bluff on the south side of "Mule" creek bottom, sixty chains to a stake at the southeast corner of an inclosure formerly occupied by A. R. Phillips, thence north fourteen degrees forty-five minutes east (true bearing) along the fence of said inclosure crossing "Mule" creek, and the aforesaid road forty chains to the place of beginning, con-

taining in all two hundred and forty acres, including the aforesaid road—variation of needle fifteen degrees forty seconds; provided, a good title, free and clear of incumbrance, can be obtained; and provided further, that the purchase price shall not exceed five thousand dollars, gold coin of the United States of America.

Sec. 2. The sum of five thousand dollars, or such portion thereof as may be necessary, is hereby appropriated out of any money in the State treasury not otherwise appropriated, for the purchase mentioned in the first section of this act; and the controller is hereby authorized to draw his warrant for said amount, and the treasurer is hereby directed to pay the same.

Sec. 3. This act shall take effect immediately. [Approved April 1, 1897.]

An act to provide for certain improvements at the Preston School of Industry, Ione, and to make an appropriation therefor.

Section 1. The sum of fifty-six thousand dollars is hereby appropriated out of any money in the State treasury not otherwise appropriated, to construct for the Preston School of Industry at Ione, a dining-room, assembly-room, new kitchen, two double cottages, and to furnish the same.

Sec. 2. The sum herein appropriated shall be expended under the directions of the trustees of the Preston School of Industry.

Sec. 3. The controller is authorized to draw his warrant in favor of the said trustees for the amount herein appropriated, and the treasurer is directed to pay the same.

Sec. 4. The State board of examiners are hereby by instructed to require the trustees of the Preston School of Industry to cause to be performed by

the inmates thereof as much of the work hereby authorized as can be properly done by them. And for this purpose the trustees of said school are exempted from existing laws directing otherwise than as herein provided, subject, however, to the approval of the State board of examiners.

Sec. 5. This act shall take effect immediately.
[Approved April 1, 1897.]

SCHOOL OF REFORM.

An act to establish a State reform school for juvenile offenders, and to make an appropriation therefor.

[Approved March 11, 1889; 1889, 111.]

Location of reform school for juvenile offenders.

Section 1. There shall be established and maintained in this State, and located at Whittier, in the county of Los Angeles, an institution for the discipline, education, employment, reformation, and protection of juvenile delinquents in the State of California, to be known as "the Whittier State school"; and in all judicial, official, or other proceedings, and in all contracts, transfers, or other instruments in writing, the above name shall be deemed a sufficient designation of said institution. [Amendment approved March 23, 1893; Stats. 1893, 328.]

Board of trustees.

Sec. 2. The general supervision and government of said institution shall be vested in a board of trustees, consisting of three citizens of the State of California, who shall be appointed by the governor, with the advice and consent of the senate. The members of said board shall hold their offices for the respective terms of two, three, and four

years from the first day of March, eighteen hundred and eighty-nine, and until their successors shall be appointed and qualified, said respective terms to be designated in their appointments; and thereafter there shall be one of said board appointed in the same manner every two years, whose term of office shall continue four years, and until his successor is appointed and qualified. If a vacancy shall occur in said board by expiration of the term of any such trustee, or otherwise, when the senate is not in session, the governor shall fill such vacancy for the unexpired term, subject to the approval of the senate at its next regular session. Said trustees, before entering on the discharge of the duties of their office, shall each take an oath faithfully to discharge the same.

Powers.

Sec. 3. The trustees of such institution shall be a body corporate and politic for certain purposes, namely: To receive, hold, use, and convey or disburse moneys or other property, real and personal, in the name of said corporation, but in trust and for the use and by the authority of the State of California, and to control, manage, and direct, the several trusts committed to them respectively, including the organization, government, and discipline of all officers, employees, and other inmates of said institution, with power to make contracts, to sue and be sued, plead and be pleaded, to have and to use a common seal, and to alter the same at pleasure, and to exercise all the powers usually belonging to said corporations and necessary for the successful discharge of the obligations devolved by law upon said members of trust: provided, that they shall not have power to bind the State by any contract or obligation beyond the amount of appropriations which may at the time have been made for the purposes expressed in the contract or obligation, nor to sell or convey any part of the real estate belonging to such institution

without the consent of the legislature, except that they may release any mortgage, or convey any real estate which may be held by them as security for any money or upon any trust, the terms of which authorize such conveyance; and provided further, that the legislature shall have power at any time to amend, alter, revoke, or annul the grant of corporate powers herein contained.

To select site.

Sec 4. The said board of trustees are hereby empowered with full power and authority to select a site for the permanent location of said school in the county of Los Angeles. Said trustees shall, within thirty days after their appointment and qualification, examine the different sites offered by the people of the county of Los Angeles for the location of the said school, and select therefrom a suitable location for said buildings; and the site selected by them shall be and remain the permanent site for said school; said site to contain not less than forty nor more than one hundred and sixty acres, giving preference, other things being equal, to a location central and easy of access from all parts of the county or State; provided, that no buildings shall be commenced or erected in said county of Los Angeles until a deed in fee simple of the land selected by the said board of trustees shall be made to the State, and recorded in the records of the county recorder of said Los Angeles county, and said deed deposited in the office of the Secretary of State. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

To adopt plans.

Sec. 5. The said board of trustees shall prepare and adopt plans for the grounds, buildings, and fixtures necessary and proper for such an institution, not in their judgment to exceed in cost the amount of money hereinafter appropriated, but if practicable, of such description that other build-

ings can be added to or enlarged without injury to their symmetry or usefulness; and may let or make all necessary contracts, with the approval of the governor, for the construction of such buildings and fixtures, and the improvement of the grounds, according to such plans. Said board of trustees shall use all practicable diligence in the commencement and completion of said buildings and fixtures, and the improvement of the grounds, according to such plans.

Trustee or employee not to be interested.

Sec. 6. No trustee or employee of such institution shall be personally, directly, or indirectly interested in any contract, purchase, or sale made, or any business carried on, in behalf of or for said institution. All contracts, purchases, or sales made in violation of this section shall be held and declared null and void, and all moneys paid to such trustee, employee, or any other person for his benefit, in whole or in part, in consideration of such purchases, contracts, or sales made, may be recovered back by civil suit, to be instituted in the name of the State of California, against such trustee, employee, or person acting in his behalf; and in addition it is hereby made the duty of the governor and the board of trustees, as the case may be, upon proof satisfactory of the fact of such interest, to immediately remove the trustee or employee delinquent as aforesaid, and to report the facts to the attorney general, who shall take such legal steps in the premises as he shall deem expedient.

Rules and regulations.

Sec. 7. The board shall make all needful rules and regulations concerning their meetings and the modes of transacting their business, shall take charge of said institution to see that its affairs are properly conducted, that strict discipline is maintained, and the suitable employment and edu-

ention are provided for its inmates. They are authorized to make contracts for the purchase of furniture, apparatus, tools, stock, provisions, and everything necessary to equip the institution for the purposes herein specified, and to maintain and operate the same; provided, said board shall incur no expense nor contract any debt beyond appropriations made or donations given for the said school, and then only in such manner as may be prescribed by the act of appropriation or the instrument of donation. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Officers.

Sec. 8. The board shall annually elect from their own number a president and a vice-president, whose term of office shall be for one year, and until their successors shall be duly appointed and qualified. They shall also elect a treasurer, not one of their own number, whose term of office shall be for two years and until his successor shall be duly elected and qualified, who shall be at all times subject to removal by the board for good cause. [Amendment, approved, March 23, 1893; Stats. 1893, p. 328.]

Superintendent.

Sec. 9. The board shall appoint a superintendent of said school, not of their own number, whose salary shall be fixed by said board, not to exceed three thousand six hundred dollars per annum, and shall also appoint such other officers and such assistants as the wants of the institution may from time to time require, and shall prescribe their duties and fix their salaries, as may be reasonable. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Report of trustees.

Sec. 10. Said board of trustees shall, on or before the first day of December, every two years, make to the governor a full and detailed report of

their doings as such trustees, and of the expense of said institution, with such other information relating thereto as they may think interesting or useful to the State; which report shall be communicated by the governor to the next succeeding session of the State legislature. Said trustees shall receive no salary for their services as such from the State, but shall be allowed all necessary expenses incurred in the discharge of their duties.

Meetings.

Sec. 11. The board of trustees shall have a regular meeting once every three months, at such time and place as they may direct; special meetings may be called by the president of said board in all cases where it becomes necessary for such a meeting.

Duty of superintendent.

Sec. 12. The superintendent, before entering upon the duties of his office, shall take an oath faithfully to discharge the same, and execute a bond, with sureties to be approved by the board, in a sum to be fixed by the board, conditioned for the faithful performance of all his duties as such superintendent. He shall be a resident at the institution, and shall be ex officio the secretary of the board, taking charge of all books and papers. He shall have charge of the land, buildings, furniture, apparatus, tools, stock, provisions, and every other species of property belonging to the institution, subject to the direction and control of said board, and shall account to the board in such manner as they may require for all property intrusted to him, and all moneys received by him, from whatever source, shall be deposited with the treasurer. His books shall at all times be open to the inspection of the board, who shall at least once in every three months carefully examine the same, and all accounts, vouchers, documents connected therewith, and make a report of the result of such

examination in a book provided for the purpose. He shall have charge of the inmates of said institution; he shall discipline, govern, instruct, employ, and use his best efforts to reform the children and youth under his care, and shall at all times be subject to removal by the board for incapacity, cruelty, negligence, immorality, or any other good cause.

Duty of treasurer.

Sec. 13. The treasurer, before entering upon the duties of his office, shall take an oath faithfully to discharge the same, and shall execute a bond to the people of California, with sureties, to be approved by said board, in at least double the sum of money for which he may be responsible as treasurer, conditioned for the faithful performance of all his duties as such treasurer; he shall take charge of all the funds of the institution, receiving the same and disbursing them on the written order of the superintendent, and shall account to the board, in such a manner as they may require, for all funds intrusted to him, from whatever source. His books shall at all times be open to the inspection of the board and superintendent, who shall at least once in every six months carefully examine the same, and all the accounts, vouchers, and documents connected therewith, and make a report of the result of such examinations. Such treasurer must be a citizen of Los Angeles county, and shall receive for his services a salary of six hundred dollars per annum.

Arrangement of building to suit sexes.

Sec. 14. Said board of trustees shall arrange the building or buildings to be used for said school, and the grounds about the same, so that a portion thereof may be used for the proper confinement, care, and education of the male inmates, and the remaining portion for the proper confinement, care, and education of the female inmates, and to the

absolute exclusion of all communication of any kind or character between the sexes. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Proclamation when ready to admit inmates.

Sec. 15. Whenever said institution shall have been so far completed as to properly admit of the reception of inmates therein, the governor shall make due proclamation of that fact; and thereafter it shall be lawful for said board of trustees to receive into its care and guardianship minors between the ages of eight and eighteen years committed to its custody, as hereinafter provided. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Committal.

Sec. 16. When any boy or girl between the ages of eight and eighteen years shall be found guilty by a superior court of any county in the State, and who, in the opinion of such court, would be a fit subject for commitment to the said school, it shall be lawful for the said court to suspend judgment or sentence (except when the penalty is life imprisonment or death), and to commit such minor to the said school for a period embracing his or her minority, unless sooner discharged by law, or as in this act provided; but no minor who is under the age of eight years, or who is suffering from any contagious, infectious, or other disease which would probably endanger the lives or health of the other inmates of said school, shall be committed to said school; and further provided, that no such minor shall be committed to said school unless the judge of such court shall be fully satisfied that the mental and physical condition and qualifications of said minor are such as to render it probable that such minor will be benefited by the reformatory and educational discipline of said school. The board of trustees of said school shall have author-

ity to make rules reducing, as the reward for good conduct, the time for which such person or persons have been committed. It shall be the duty of all courts committing any minor to such school, to certify to the superintendent thereof the age of the person so committed, as nearly as can be ascertained by testimony taken under oath before such court, or in such manner as the court may direct. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Dismissal by the board.

Sec. 16 b. It shall be lawful for the board, whenever it may deem any inmate of said institution to have been so far reformed as to justify his discharge, to give him an honorable dismissal, and to cause an entry of the reasons for such dismissal to be made in the book of records prepared for that purpose. All persons thus honorably dismissed, and all those who shall have served the full term of their respective sentences, shall thereafter be released from all penalties and disabilities resulting from the offense or crime for which they may have been committed. Upon the final discharge of any inmate, as in this section provided, the superintendent, where any sentence or judgment was previously suspended, as mentioned in section sixteen of this act, shall immediately certify such discharge, in writing, and shall transmit the said certificate to the court by which such person was committed, and said court shall thereupon dismiss the accusation, and the action pending against said person. [New section, approved March 23, 1893; Stats. 1893, p. 328.]

Conditional dismissal and parole.

Sec. 16 c. The board shall have authority also to issue certificates of conditional dismissal and parole to any worthy minor confined in the institution, on the following conditions: It may bind such minor by articles of indenture to any suit-

able person who will engage to educate him, and to instruct him in some useful art or trade, or it may return him to his parents, or it may place him under the care of any reputable person who is a citizen and a resident of this State, after such person, parent, guardian, or resident citizen shall have become bound to the said board, with good and sufficient sureties, conditioned on the proper custody, care, education, and moral and industrial training of the said paroled minor. The time of such conditional release shall be made subject to good behavior and continued reformation on the part of the person thus paroled. Any minor who violates his parole, or who becomes habitually disobedient and incorrigible, may be returned to the said school to serve the unexpired term of his sentence, on complaint of his guardian and the written requisition of the superintendent of said school. Every paroled minor who properly observes and obeys the condition of his parole until the date of the expiration of his term of commitment shall be entitled to all the benefits and immunities in this act provided. If at any time it shall be determined by the board of trustees of said school, to its satisfaction, that any minor who may have been committed to the care or guardianship of any third person, as in this section previously provided, is not being properly treated or cared for, according to the terms and conditions under which such minor was intrusted to said third person, then by a resolution of the said board entered upon its minutes, and upon the requisition of the superintendent of said institution issued thereon, the said minor may be recalled to said school, and he or she shall be released from all obligations to such third person; and in such case the said board shall have the right to maintain all necessary actions or proceedings against the said third person and his bondsmen to recover the penalty in whatever bonds may be given by

reason of the failure of said third person to perform the conditions under which said minor was intrusted to his care; and in the event of minors who may have been bound out by the said board of trustees by articles of indenture, the said board shall institute and maintain all proper actions and proceedings to cancel and annul said articles of indenture. [New section, approved March 23, 1893; Stats. 1893, p. 328.]

Incorrigible and improper subjects.

Sec. 16 d. Any minor who shall, during the time of his or her commitment, be found incorrigible, or who shall be, in the judgment of the board of trustees of said school, determined to be an improper subject for detention in said school, may be returned to the court by which said minor was committed, and upon written complaint of the said board, attested by the superintendent of said school, and filed with the original complaint, it shall be the duty of said court to enter judgment and pass such sentence as would have been lawful at the time when the said minor was first committed to the said school. [New section, approved March 23, 1893; Stats. 1893, p. 328.]

Arresting proceedings and committing to school.

Sec. 17. If any accusation of the commission of any crime shall be made against any minor under the age of eighteen years before any grand jury, and the charge appears to be supported by evidence sufficient to put the accused upon trial, the grand jury may, in their discretion, instead of finding an indictment against the accused, return to the superior court that it appears to them that the accused is a suitable person to be committed to the care and guardianship of said institution; the court may thereupon order such commitment, if satisfied from the evidence that such commitment ought to be made, which examination may be waived by the parent or guardian of such mi-

nor. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

When judge may commit.

Sec. 18. If any minor between the ages of eight and eighteen years shall be arraigned for trial in any court having competent jurisdiction, on a charge of any violation of any criminal law of this State, except for the commission of a capital offense, or an attempt to commit a capital offense, the judge may, in his discretion, with the consent of the accused, arrest at any stage of the cause any further proceedings on the part of the prosecution, and commit the accused to the care and guardianship of this institution. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Private examination of accused.

Sec. 19. All minors between the ages of eight and eighteen years, who may be accused of any offense punishable by imprisonment, shall, with a view to the question whether they ought to be committed to said institution, be entitled to a private examination and trial before a court having competent jurisdiction, to which only the parties to the case and the parent or guardian of the accused and their attorneys shall be admitted, unless one of the parents, the guardian, or other legal representative of the minor demand a public trial; in such case, the proceedings shall be in the usual manner. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Receiving inmates by trustees.

Sec. 20. It shall also be lawful for the said board of trustees, under such rules as they may prescribe, to receive into the care and guardianship of said institution, whenever it may be convenient so to do, minors between the ages of eight and eighteen years, committed to custody in any of the following modes:

1. Minors committed by any judge of a superior

court of this State on the complaint in writing, filed and due proof thereof made by the parent or guardian of such minor, showing that by reason of the incorrigible and vicious conduct or nature of such minor he is beyond the control and power of such parent or guardian, and that from a regard for the future welfare of such minor and the protection of society it appears that such minor should be placed in the care of such institution.

2. Minors committed by any judge of the superior court of this State where complaint in writing has been filed and due proof of the same has been made showing that such minor is a proper subject for the care and guardianship of such institution in consequence of vagrancy or of incorrigible or vicious conduct, in cases where, from moral depravity or otherwise, the parent or guardian having the control of such minor is incapable of exercising or is unwilling to exercise the proper care or discipline over such minor, or in cases where such minor has no parent, guardian, or other protector.

3. Minors committed by any judge of the superior court of this State where complaint in writing has been filed and due proof of the same has been made by the mother or guardian, when the father is dead or has abandoned his family, or is an habitual drunkard, or does not provide for the support of such minor, and it appears that such minor is destitute of a suitable home and of adequate means of obtaining an honest living, or is in danger of being brought up to lead an idle and immoral life, and where such mother or guardian is unable to provide the proper support and care for such minor. [Amendment, approved March 23, 1893; Stats. 1893, p. 328.]

Ascertaining whether inmates can be received.

Sec. 21. Before conveying minors to said institution, the person or persons having charge of said minors shall ascertain from the superintendent

ent whether they can be received; and if they cannot, then the case of such minors shall be disposed of as if this act had never been passed and no proceedings taken under it. [Amendments approved March 27, 1893; Stats. 1893, p. 328.]

Record.

Sec. 22. In all cases where the commitment is executed by the official person, whose proceedings are usually evidenced by the record, or where the occasion of the commitment is a criminal charge or conviction against the infant, no other record shall be made (unless demanded by the infant, his parent, or guardian) than that, in substance, such infant (naming him), who on a day therein named was of the age of — years, having been brought before said court or officer, and it having been ascertained by the testimony of the witnesses that such infant was a suitable person to be committed to the instruction and discipline of such institution, and in case of conviction for crime (naming the offense), therefore such infant was ordered to be committed to said institution.

Supplies on release of prisoner.

Sec. 23. Upon the discharge of any person committed to said school, the superintendent thereof, under such regulations and restrictions as the said board of trustees may prescribe, may provide such person with suitable clothing and five dollars in money, and procure transportation for such person to his or her home, if resident in this state, or to the county to which he or she may have been committed, at his or her option.

Estimate of expenses.

Sec. 24. Said board of trustees shall, with the approval of the governor, estimate and determine, as near as may be, the actual expenses per month of keeping and taking care of each minor committed to said institution, not including the use of grounds and buildings, and shall include a state-

ment of such estimated price in each biennial report of the governor. When any minor is committed to such institution at the instance of his or her parent or guardian, or other protector, the cost of keeping said minor, including the cost of transporting to and from the institution, shall be wholly paid by such parent or guardian, unless, by reason of the poverty of such parent or guardian, or other good cause, said board of trustees shall otherwise order and direct; in such case, such expenses, including the cost of transportation, shall be borne one-half by the county from which such minor is committed, and the remaining one-half shall be borne by the state; and in every case where a minor who has no parent, guardian, or other protector, who is able to pay the cost of transportation to and cost of maintenance at said school, is committed thereto, such cost of transportation and maintenance of such minor shall be borne, one-half by the State and the other half by the county from which said minor is committed. The expense which any county may be liable to pay on account of any minor committed to said institution under the provisions of this act shall be paid by the board of supervisors into the state treasury on a certified and detailed statement as to the amount due therefor from such county being furnished to the auditor of the county by said superintendent; but in no case shall the amount charged to any county for the keeping of any minor exceed one-half of the estimated cost to the state of his or her support, exclusive of the use of the permanent property of the institution. All moneys paid by such counties under the provisions of this section into the state treasury shall be placed in a fund, to be designated and known as the "Whittier reform school fund," for the use of said institution; provided, however, that no order shall be made by said board of trustees charging any coun-

ty with one-half of the cost of keeping in the institution any infant committed at the instance of his or her parent or guardian, or other protector, unless a certificate in writing is first produced, signed by the president of the board of supervisors of such county, setting forth that the case is one in which the expense should be charged to the state and county, and also setting forth the reasons for their being so charged. [Amendment approved March 23, 1893; Stats. 1893, 328.]

Estimated monthly expenses.

Sec. 25. Immediately after the governor shall make proclamation that said institution is ready for the reception of inmates, the board of trustees shall make the estimated actual expense per month of keeping and taking care of the infants, as required under section twenty-four, which estimate shall control in such matters until the first biennial report of said board is made.

Aiding escapes.

Sec. 26. If any person procure the escape of any person committed to the school, or advise or connive at, aid, or assist in such escape, or conceal any such person so committed after such escape, he shall, upon conviction thereof in any superior court, be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not less than two months nor more than one year, or by both such fine and imprisonment; or, if such person so convicted be under the age of sixteen years then he shall be sentenced to the school, as in this act provided. [Amendment approved March 23, 1893; Stats. 1893, 328.]

Application for discharge of inmate.

Sec. 27. If any parent, or guardian, or master to whom a minor has been apprenticed, or any person occupying the position of parent, protector, or guardian, in fact or in reality, by blood or mar-

riage, not more remote than first cousin to such minor, shall feel aggrieved by such commitment to such institution when such commitment has been made under section twenty of this act, he may make written application to the board of trustees of the institution for the discharge of such minor, which application shall be filed with the superintendent, who shall inform the trustees thereof, and the same shall be heard and determined by such trustees at such time and place as they shall appoint for that purpose, not later than the next regular meeting of the board. Such application shall state the grounds of the applicant's claim to the custody of the minor, and the reasons for claiming such custody. Within ten days after hearing said application, the trustees shall make and announce their opinion thereon, and if they shall be of the opinion that the welfare of such minor would be promoted by granting the application, they shall make an order to that effect; otherwise, they shall deny the application. The applicant may, upon the denial of his application, by first giving security for the payment of all costs (the security to be approved by the clerk of the proper court) commence an action in the superior court of the county in which the institution may be situated, for the recovery of the custody of such minor, against the trustees of such institution. The complaint in said action shall state the fact and manner of the minor's commitment to the said institution, the making of the applicant's application to the trustees for the custody of such minor, and the overruling of such application by such trustees, as well as the ground upon which the applicant relies for the recovery of the custody of such minor. Said action shall be prosecuted in like manner as other civil actions, and the cost thereof shall be paid by the applicant without reference to the result of the action, unless the court shall state in the judgment that the refusal of the

trustees to grant the application of the applicant was plainly unreasonable, or that the original commitment was manifestly improper and unnecessary. [Amendment approved March 23, 1893; Stats. 1893, p. 328.]

Duty of sheriffs.

Sec. 28. It shall be the duty of the sheriff of any county wherein an order is made or approved by a superior judge committing any minor to said school, to execute any and all writs of commitment issued or approved by said judge, and to receive as compensation therefor such fees as are now or may hereafter be provided by law for the transportation of prisoners to the State prison; provided, that in all cases where the commitment shall be made under section twenty of this act, the parent, guardian, or other protector of such minor may, at his option, and in all cases where he is liable, or where the estate of such minor is sufficient, execute said writ of commitment, after having been duly sworn therefor, with like powers and with like effect as the sheriff would possess in such case, but without expense to the said State; and further provided, that in the case of minor females committed to said school, and there is no parent, guardian, or other protector of such minor, who, in the opinion of the court, is a proper person to safely conduct such female to said school, that then, in such case, the court shall appoint some suitable woman of satisfactory character and discretion, who shall take the custody of such minor female after her said commitment, and shall forthwith deliver her to said school, and be entitled to the same compensation therefor as is otherwise provided to be paid to the sheriff in all cases where, if such minor were a boy and were by a sheriff delivered to said school, he, the said sheriff, would be entitled to receive compensation, under the terms of this act. [Amendment approved March 27, 1893; Stats. 1893, p. 328.]

When inmate must support himself.

Sec. 29. In all cases where an infant has been committed to said school for any of the causes mentioned in section twenty of this act, and such minor, at the time of his commitment or afterwards, and during his term of confinement at said school, succeeds to any estate which is of sufficient value to cover his expenses to and from and while at said school, the same shall become subject to such expense; and the said superior court shall, by a proper order therein entered, cause the parent or guardian to sell so much of said minor's estate (there not being sufficient money) to pay such expenses. In each case the proceedings thereon shall be similar to those required of guardians in ordinary sales of the property of wards. When any money is realized by virtue of any such sales, the court, by proper order, shall cause the same, or a sufficient amount thereof, to be paid to the trustees of such institution; or in case any expense of said minor has been borne already by the State or county, then such court shall order said county and State to be fully reimbursed for said expense, by causing a sufficient amount therefor to be placed in the State and county treasury. [Amendment approved March 27, 1893; Stats. 1893, p. 328.]

Demands.

Sec. 30. The said board of trustees shall examine, audit, and allow the demands arising under the terms of the aforesaid act and the amendments thereto, and the State controller shall thereupon draw his warrants therefor payable out of the proper fund, and the State treasurer is hereby ordered to pay such warrants.

All acts or parts of acts in conflict with this act are hereby repealed. [Amendment approved March 27, 1893; Stats. 1893, p. 328.]

Sec. 31. This act shall take effect and be in force from and after its passage.

An Act relating to commitments to the State School at Whittier and to the Preston School of Industry; fixing the authority to examine and commit to such schools with the Superior Court Judges of the counties, and fixing the responsibilities from which commitments are made to the State for maintenance of the persons committed therefrom; providing for the manner of payment thereof, and fixing the responsibility of the parents to the counties from which their children are committed.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. The Superior Judge of any county, and no other judicial officer, shall have power to examine, discharge, or commit any offender either to the Whittier State School or to the Preston School of Industry; provided, that the Superior Judge shall determine whether or not the parent or guardian of any minor committed to the Whittier State School or to the Preston School of Industry is able to pay to the county in which the commitment is made for the maintenance of such minor during the term of such commitment; and when the Superior Judge shall determine that said parent or guardian has the ability to pay as aforesaid for the maintenance of such minor during the term of such confinement, the parent or parents or guardian shall pay into the treasury of such county the sum of eleven dollars per month in advance; and in case of the failure to pay the same as herein provided, it shall be the duty of the district attorney of such county to proceed to collect the amount from such parent, parents, or guardian in the manner that other indebtedness against the county is collected.

Sec. 2. For each and every person hereafter

committed to either the Whittier State School or the Preston School of Industry, the county from which the commitment is made shall pay into the State treasury the sum of one hundred and thirty-two dollars per annum, and at that rate for each fraction of a year.

Sec. 3. It is hereby made the duty of the clerk of the Superior Court of the county from which such commitment is made, to certify to the county auditor the name, age, and date of commitment of each person committed by the Superior Judge thereof, and the amount due to the State from the county by reason of such commitments, and before the first day of May and December of each and every year to file with the treasurer of the county a statement of the number of commitments, with the date thereof, and the amount due from the county by reason of such commitments, to the State Treasurer; and it is further made the duty of the county treasurer, during the settlement or at the time of the settlement with the State during the month of May and December of each year, to pay to the State Treasurer, through the State Controller, the amount so found to be due to the State by reason of commitments to the State schools as herein provided.

Sec. 4. The Superintendent of the State School at Whittier and the Preston School of Industry are hereby required to transmit to the State Treasurer a statement of all commitments to their respective institutions, showing the name of the person committed, the date of the commitment, and the county from which the commitment is made, and the amount due to the State from the county by reason of such commitments; said statement to be made quarterly, as follows: on or before the first day of January, the first day of April, the first day of July, and the first day of October of each year; and it is hereby made the duty of the controller of State to add the amounts

due to the State from said counties such sum as may be shown to be due by reason of commitments to such schools, as in section two of this act provided.

Sec. 5. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 6. This act shall take effect immediately. [Approved March 26, 1895.]

An Act to prevent evil-disposed persons from coming upon the grounds of the Whittier State School at Whittier, California, or the Preston School of Industry at Ione.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

Section 1. Any person who shall come upon the grounds of the Whittier State School at Whittier, or Preston School of Industry at Ione, or any of the grounds adjacent thereunto where inmates are employed, and leave or deposit where inmates may have access thereunto, any guns, pistols, knives, or other deadly weapons, or any explosive of any kind whatsoever, shall be guilty of felony, and upon conviction thereof shall be punished by imprisonment in the State prison for a term not to exceed three years.

Sec. 2. Any person who shall come upon the grounds of the Whittier School at Whittier, or Preston School of Industry at Ione, or any of the grounds adjacent thereto where inmates are employed, and leave or deposit where inmates may have access thereto, any whisky, cigars, cigarettes, tobacco, or any other narcotic or stimulant, or who shall furnish to any of the inmates of said school any of the above-named articles, shall be guilty of a misdemeanor.

Sec. 3. Any person having been previously con-

victed of a felony, and who has been confined in either of the State prisons of this State, who shall come upon the grounds of the Whittier State School, or Preston School of Industry at Ione, or communicate, or attempt to communicate, with any of the inmates of said institution without the consent of the Superintendents, or other officers in charge of said schools, shall be guilty of a felony, and upon conviction thereof shall be punished by confinement in either of the State prisons of this State for not more than three years.

Sec. 4. Any tramp, vagrant, or person who is a known associate of thieves, who shall come upon the grounds of the Whittier State School or Preston School of Industry at Ione, or grounds adjacent thereto, and communicate with any of the inmates of said schools, without the consent of the superintendents thereof, or who shall visit or communicate with any paroled pupil of said school with a view to induce him to violate the conditions of his parole, or who shall induce, by threats, intimidation, or persuasion, such paroled pupil to leave the guardian under whom he has been placed by the Superintendents of the Whittier State School, or Preston School of Ione, shall be guilty of a misdemeanor.

Sec. 5. Any person who shall deliver, or agree to deliver, any literature, letters, or any reading matter whatsoever to any of the pupils of the Whittier State School, or Preston School of Industry at Ione, without the same passing through the hands of the Superintendents of said schools, or other officer designated by him for the purpose of receiving and examining such literature, letters, or reading matter, shall be guilty of a misdemeanor.

This act shall take effect immediately. [Approved March 26, 1895.]

Penal Code.—55

An Act to provide for the improvement of the reform school at Whittier, California, for juvenile offenders, and make an appropriation for the same.

Section 1. The sum of one hundred and twenty-one thousand four hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of the moneys in the State treasury not otherwise appropriated, to be paid to the trustees of the reform school for juvenile offenders, and by them expended as follows: For laundry machinery, consisting of rack iron dry-room with double coils, washers, extractors, mangles, tier-stoves, engine, soap-tanks, tubs, shaftings, pulleys, hangers, belting, etc.; for brick engine and boiler-house; for cement floors for laundry-room, dynamo-room, and engine-room; for hydraulic passenger and freight elevators, with accumulators, condensers, and pumps; for oil-burning plant, consisting of oil-house, oil-tank, air-compressor for oil burning, oil and air accumulator, oil-burners, oil pipe-line from railroad; for deep well pump, capacity two thousand gallons per hour; for radiators, coils, and everything complete for steam-heating industrial building, administration building, and girls' cottage; for incandescent electric light plant complete for lighting industrial building, girls' cottage, and administration building, consisting of electroliers, dynamos, and arc lights; for power plant, consisting of two tubular boilers, two fifty horse-power engines, two duplex boilers, feed-pumps, and all fitting complete; total, fifty thousand dollars. For furnishing and equipping administration building and girls' cottage, twenty-five thousand dollars; for sewerage, one thousand dollars; for asphaltum or cement in court and walks around administration building, one thousand five hundred dollars;

for water pipe-lines and the construction of reservoir and piping water, ten thousand dollars; for fitting up industrial building with tools and machinery for systematic instruction in the trades, five thousand dollars; for one hundred and twenty acres of land, in accordance with bond dated July twenty-third, eighteen hundred and eighty-nine, twenty-six thousand four hundred dollars; for stock, vehicles, and agricultural implements, two thousand five hundred dollars.

Sec. 2. The controller of State is hereby authorized and directed to draw his warrant for said amounts, upon the demand of the trustees of the reform school for juvenile offenders, and the treasurer of State is hereby authorized and directed to pay the same.

Sec. 3. This act shall take effect from and after its passage. [Approved April 6, 1891; Stats. 1891, p. 484.]

An Act to provide for additional improvements at the reform school for juvenile offenders, located at Whittier, in the county of Los Angeles, and State of California, and to make an appropriation for the same.

Section 1. The sum of one hundred thousand dollars, or so much thereof as may be necessary, is appropriated out of the money in the State treasury not otherwise appropriated, to be paid to the trustees of the reform school for juvenile offenders, located at Whittier, in the county of Los Angeles and State of California, to be by them expended as follows:—

For the construction and erection of the following buildings and improvements to be made upon the lands belonging to the State at Whittier, aforesaid, and appertaining to said school, and furnishing and equipping the same as follows, to-

wit: For commissary's warehouse, and office, bakery, and kitchen, to be constructed south of and adjoining the administration building, and to be connected therewith by a covered way; for cow and hay barn, for buildings and furnishing for girls' department, including two buildings for general purposes, dormitories, etc., and one building for instructing in trades and employments; for shelter buildings; for additions to electric plant; for paying architect's fees and for supervision of construction; for purchasing of fruit trees for planting the lands; for purchase of books and current periodicals for the boys' department for the forty-fifth and forty-sixth fiscal years; for purchase of water and distributing the same.

Sec. 2. The controller of State is hereby authorized and directed to draw his warrants for said amounts upon the demand of the trustees of the said school, and the State Treasurer is hereby authorized and directed to pay the same.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 23, 1893; Stats. 1893, p. 296.]

An Act making an appropriation to pay the deficiency in the appropriation for the support of the reform school for juvenile offenders at Whittier, for the forty-third and forty-fourth fiscal years.

Section 1. The sum of one hundred and six thousand dollars is hereby appropriated out of any money in the State treasury not otherwise appropriated, to pay the deficiency in the appropriation for the support of the reform school for juvenile offenders at Whittier, for claims approved and to be approved by the State board of examiners, for the forty-third and forty-fourth fiscal years.

Sec. 2. The controller is hereby authorized to draw his warrants for the amount herein made payable, in such amounts and at such times as may be approved by the said State board of examiners, and the treasurer directed to pay the same.

Sec. 3. This act shall take effect immediately. [Approved March 23, 1893; Stats. 1893, p. 192.]

SEDUCTION.

An Act to punish seduction.

Section 1. Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of eighteen years, into any house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, and every person who aids or assists in such abduction for such purpose, and every person who by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, is punishable by imprisonment in the State prison not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. [Approved March 1, 1872; Stats. 1871-2, p. 184.]

SHERIFFS.

An Act to allow compensation to sheriffs for conveying prisoners to the State prisons, and insane persons to the insane asylums.

Allowance to sheriff for conveying insane and prisoners.

Section 1. There shall be allowed by the State board of examiners to the sheriff, for delivering a prisoner to either of the State prisons, actual expenses and five dollars per diem for the time necessarily consumed in delivering such prisoner.

Sec. 2. There shall be allowed by the State board of examiners to the sheriff, for delivering an insane person to either of the insane asylums, his actual expenses and the same per diem as is allowed in section one of this act.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 14, 1885; 1885, 126.]

SHIPPING.

See Buoys and Beacons.

STATE PRISONS.

An act to regulate and govern the State prisons of California.

[Approved March 19, 1889; 1889, 404.]

State prisons.

Section 1. The State prisons of this State shall be known as the State prison at San Quentin,

which shall have an official staff conforming to the laws of the State in relation to State prisons; and the State prison at Folsom, which shall have a similar staff and be similarly organized, and all the finances and accounts of the two prisons shall be kept separate and apart from each other.

Directors, how appointed.

Sec. 2. For the government and management of the California State prisons, there shall be appointed by the Governor, by and under the advice of the Senate, five directors, who shall hold their office for the term of ten years, from and after the date of such appointment; such appointments to be made as vacancies occur in the board as it now exists. In case of death or resignation of a director, his successor shall be appointed to fill the unexpired term of such director by the Governor, by and with the advice of the Senate. Each director shall subscribe an oath of office, which shall be indorsed on his commission, within ten days after receiving written notice of such appointment, and a duplicate of such oath shall also be filed with the Secretary of State.

Election of president.

Sec. 3. At the first meeting of the board of directors in the year eighteen hundred and ninety, and annually thereafter, they shall elect one of their members president of the board, whose duty it shall be to preside at the meeting of the board, and to perform such other duties as may, from time to time, be prescribed by the rules and regulations for the government of the board.

Quorum.

Sec. 4. Three members of the board shall constitute a quorum for the transaction of all business, but no order of the board shall be valid unless concurred in by three or more members.

Duty of directors.

Sec. 5. It shall be the duty of the directors to

determine the necessary officers and employees of the prisons other than those of the wardens and clerks, specifying their duties severally, and fixing their salaries; to prescribe rules and regulations for the government of the prisons, and to revise and change the same from time to time as circumstances may require, and to board and lodge the officers and employees, or allow them a money commutation in lieu thereof; provided, the warden may make temporary rules, in cases of emergency, to remain in force until the succeeding meeting of the board. At least three of the directors shall visit the prisons once in each month, and oftener if necessary, at such time as they may select. The directors shall audit all claims for supplies, services, and expenses of officers and employees, and all other demands against the prison.

Second—To enter or cause to be entered on their journal by the clerks all official acts which shall be signed by at least three members of the board.

Third—On or before the first day of December of each year to report to the Governor the condition of the prisons, together with detailed statements of receipts and expenditures, and such suggestions concerning the prisoners as may appear to be necessary and expedient.

Fourth—The board of directors shall also adopt rules and regulations not inconsistent with the constitution and the laws of the State of California for the government of the board, and may change the same at their pleasure.

Fifth—The board of directors shall have power to establish an office in San Francisco, and employ a secretary.

Appointment of wardens.

Sec. 6. The directors shall appoint a warden for each prison, who shall take and subscribe an oath or affirmation faithfully to discharge the duties of his office, as prescribed by law, and by the

rules and regulations of the board of directors, and to enter into a bond to the State of California, in the sum of twenty-five thousand dollars, with two or more sufficient sureties, to be approved by the directors and the Attorney General of the State, conditioned to the faithful performance of such duties as such officer aforesaid, and he shall hold his office four years after such appointment; the first appointments after the adoption of this act to take place at the expiration of the present term of office of the present incumbents thereof, or when such office becomes vacant.

Residence of wardens.

Sec. 7. The wardens shall reside at the State prisons to which they are respectively assigned, in houses provided and furnished at the expense of the State, as may be ordered by the board of directors, and it shall be their duty—

First—To fill all subordinate positions that may be created by order of the board of directors by appointment of suitable persons thereto.

Second—Under the order and direction of the board to prosecute all suits at law or in equity that may be necessary to protect the rights of the State in matters or property connected with the prisons and their management, such suits to be prosecuted in the name of the Board of State Prison Directors.

Third—To supervise the government, discipline, and police of the prisons, and to enforce all orders and regulations of the board in respect to such prisons. A registry of convicts shall be kept by him, and in which shall be entered the name of each convict, the crime of which he is convicted, the period of his sentence, from what county sentenced, by what court sentenced, his nativity, to what degree educated, at what institution and under what system, an accurate description of his person, and whether he has been previously con-

lined in a state prison in this or any other State, and if so, when and how he was discharged.

Fourth—He shall report to the Governor, before the twentieth of each month, the names of all prisoners whose terms are about to expire, giving in such report the terms of their sentences, the date of imprisonment, the amount of total credits to the date of such report, and the date when their service would expire by limitation of sentence.

Fifth—To perform such other duties as may be prescribed by the board of directors.

Appointment of clerk.

Sec. 8. The board of directors shall appoint a clerk for each prison, who shall take an oath of office, and enter into a bond to the State, with sureties satisfactory to the board, in the sum of ten thousand dollars, conditioned that they will faithfully discharge the duties required of them. The clerks shall hold their office for the period of four years after such appointments; the first appointments after the adoption of this act to take place at the expiration of the present term of office of the present incumbents thereof, or when such office becomes vacant.

Duty of.

Sec. 9. The clerks shall keep the accounts of the prisons to which they are severally appointed in such manner as to exhibit clearly all its financial transactions; and the clerks shall perform such other duties as may from time to time be required of them by the board of directors.

Subordinate appointments—Qualifications.

Sec. 10. No person shall be appointed to any office by the wardens, or be employed in the prisons on behalf of the State, who is a contractor or agent, or who is interested, directly or indirectly, in any business carried on therein; and no male person who is not a qualified elector of the State

of California shall be appointed by the wardens to any office in or about the prisons, nor shall any be appointed or employed by virtue of this act who is in the habit of intemperate use of liquors, and a single act of intemperance shall justify his discharge or removal, and it shall be the duty of such warden to discharge such person.

Removal of wardens and clerks.

Sec. 11. Wardens and clerks may be removed by the board of directors at any time for misconduct, incompetency, or neglect of duty; and all other officers and employees, may be removed at any time, at the pleasure of the wardens.

Salary of wardens.

Sec. 12. The wardens shall receive a salary of not less than twenty-four hundred dollars, and not to exceed three thousand dollars, per annum, in the discretion of the board of directors.

Salary of clerks.

Sec. 13. The clerks shall receive a salary not to exceed eighteen hundred dollars per annum, and all other officers and employees shall receive such compensation as the directors may deem just and equitable in each case.

Contracts.

Sec. 14. The board of directors are hereby authorized and required to contract for provisions, clothing, medicines, forage, fuel, and all other staple supplies, needed for the support of the prisons for any period of time, not exceeding one year, and such contracts shall be limited to bona fide dealers in the several classes of articles contracted for. Contracts for such articles as the board may desire to contract for shall be given to the lowest bidder, at a public letting thereof, if the price bid is a fair and reasonable one, and not greater than the usual market value and prices. Each bid shall be accompanied by such security as the board may require, conditional upon the

bidder entering into a contract upon the terms of his bid, on notice of the acceptance thereof, and furnishing a penal bond, with good and sufficient sureties, in such sum as the board may require, and to their satisfaction, that he will faithfully perform his contract. If the proper officer of the prison reject any article as not complying with the contract, or if a bidder fail to furnish the articles awarded to him when required, the proper officer of the prison may buy other articles of the kind rejected or called for, in the open market, and deduct the price thereof, over the contract price, from the amount due to the bidder, or charge the same up against him. Notice of the time, place, and conditions of the letting of contracts shall be given for at least two consecutive weeks in two newspapers printed and published in the city and county of San Francisco, and in one newspaper printed and published in the city of Sacramento, and in the county where the prison to be supplied is situated. If all the bids made at such letting are deemed unreasonably high, the board may, in their discretion, decline to contract, any may again advertise, for such time and in such papers as they see proper, for proposals, and may so continue to renew the advertisement until satisfactory contracts are made; and in the mean time the board may contract with any one whose offer is regarded as just and equitable, or may purchase in the open market. No bid shall be accepted, nor a contract entered into in pursuance thereof, when such bid is higher than any other bid at the same letting for the same class or schedule of articles, quality considered, and when a contract can be had at such lower bid. When two or more bids for the same article or articles are equal in amount, the board may select the one which, all things considered, may by them be thought best for the interest of the State, or they may divide the contract be-

tween the bidders, as in their judgment may seem proper and right. The board shall have power to let a contract in the aggregate, or they may segregate the items, and enter into a contract with the bidder or bidders who may bid lowest on the several articles. The board shall have the power to reject the bid of any person who had a prior contract, and who had not, in the opinion of the board, faithfully complied therewith.

Moneys to be paid into State treasury.

Sec. 15. All moneys received or collected by the wardens by virtue of this act shall be paid by them into the State treasury, to the credit of a fund to be known as the State prison fund, at least as often as once per month, excepting so much thereof as may be necessary to pay the expenses and money allowed discharged prisoners, and the current expenses of maintaining and operating the prisons, and the expenses of their officers and employees. The wardens shall require vouchers for all moneys by them expended, and safely keep the same on file in their respective offices at the prisons. For all sums of money required to be paid, other than for the uses above named, as well as for said uses when there is not sufficient money in the hands of the warden, drafts shall be drawn on the Controller of State, signed by at least three of the directors, and the Controller of State shall draw his warrant on the State Treasurer, who shall pay the same out of any moneys belonging to the State prison fund or appropriated for the use or support of the State prisons. The amount of all money retained by the wardens and the aggregate amount paid out shall be reported quarterly to the Controller of State, and the proper entries shall be made on the Controller's books.

Revenues to be paid to warden.

Sec. 16. All revenues of the prisons, unless
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herein otherwise provided, shall be paid to the wardens, who alone are authorized to receipt for the same and discharge from liability. When any sum of money is paid to the wardens, they shall cause the same to be properly entered on the books by the clerks.

Report to Controller.

Sec. 17. On payment of any moneys into the State treasury, as provided in this act, the wardens and State Treasurer shall report to the Controller of State the amount so paid, and the State Treasurer shall give the wardens a receipt therefor, which receipt shall be filed with the Controller. The wardens shall report to the Controller of State the amount of money paid into said treasury by them during each month, and shall also report to said Controller of State the amounts received and disbursed by them every three months, and during the period for which such report shall be made, which quarterly report shall be signed by the warden and at least three of the directors.

Employment of convicts.

Sec. 18. All convicts may be employed by authority of the board of directors, under charge of the wardens respectively, and such skilled foremen as he may deem necessary in the performance of work for the State, or in the manufacture of any article or articles for the State, or the manufacture of which is sanctioned by law. At San Quentin no articles shall be manufactured for sale except jute fabrics. At Folsom after the completion of the dam and canal the board may commence the erection of structures for jute manufacturing purposes. The board of directors are hereby authorized to purchase from time to time such tools, machinery, and materials, and to direct the employment of such skilled foremen as may be necessary to carry out the provisions of this section, and to dispose of the articles

manufactured, and not needed by the State, for cash, at private sale, in such manner as provided by law.

Treatment of prisoners.

Sec. 19. In the treatment of the prisoners, the following general rules shall be observed: Each convict shall be provided with a bed of straw, or other suitable material, and sufficient covering of blankets, and shall be supplied with garments of coarse, substantial material, of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive to good health.

Punishment.

Second—No punishment shall be inflicted except by the order and under the direction of the wardens.

Third—The warden shall keep a correct account of all money and valuables upon the prisoner when delivered at the prison, and shall pay the amount, or the proceeds thereof, or return the same to the convict when discharged, or to his legal representative in case of his death; and in the case of the death of such convict without being released, if no legal representative shall demand such property within five years, the same shall be paid into the State prison fund.

Rules.

Fourth—The rules and regulations prescribing the duties and obligations of the prisoners shall be printed and hung up in each cell and shop.

Convicts.

Fifth—Each convict, when he leaves the prison, shall be supplied with the money taken from him when he entered, and which he has not disposed of, together with any sum which may have been earned by him for his own account, allowed to him by the State for good conduct or diligent labor, or may have been presented to him from any source; and, in case the prisoner has not

funds sufficient for present purposes, he shall be furnished with five dollars in money, a suit of clothes, costing not more than ten dollars, and by the cheapest route to the place where sentenced from, if the prisoner desires to return there, or to any other place of the same cost; and he shall be entitled, if he so elect, to immunity from having his hair cut, or from being shaved, for three calendar months immediately prior to his discharge. It shall not be lawful for the officers of the prison to furnish, or permit to be furnished, to any one, for publication, the name of any prisoner about to be discharged. When the warden, and such other officers as may be designated by the directors to act with him in such cases, shall be of opinion that any convict is insane, they shall make proper examination, and if they remain of the opinion that such person is insane, the warden shall certify the fact to the superintendent of one of the State asylums for the insane, and shall forthwith send such convict to said asylum for care and treatment. If at the expiration of the term of sentence, the insane convict is still in the insane asylum, he shall be allowed to remain there until discharged cured. It shall be the duty of the warden, also, to send to the directors a copy of such certificate, and thereafter a statement as to his subsequent acts regarding the said insane convict. And it shall be the duty of the superintendent of the insane asylum to receive such insane convict and keep him until cured. It shall be his duty, upon receipt of such insane convict, to notify the directors of the fact, giving name, date, and where from, and from whose hands received. When, in the opinion of the superintendent, such insane convict is cured of insanity, it shall be his duty to immediately notify the directors thereof; and it shall be his duty also to notify the warden of the prison from whence he was received, who shall immediately send for,

take, and receive the said convict back into the prison, the time passed at the asylum counting as a part of such convict's sentence. Before discharging any convict who may be insane at the time of the expiration of his sentence, the warden shall first give notice, in writing, to a judge of a superior court of the county in which the state prison may be located, over which he has control, of the fact of such insanity; whereupon said court shall forthwith make an order, and deliver the same to the sheriff of said county, commanding him to remove such insane convict and take him before said court. Upon the receipt of such order, it shall be the duty of said sheriff, to whom it is directed, to execute and return the same forthwith to the court by whom it was issued, and thereupon the said court shall cause proper examination to be made by medical experts, and if it shall satisfactorily appear that such convict is insane, said court shall order him to be confined in one of the insane asylums. The sheriff shall receive the same compensation as for transferring a prisoner to the state prison, and to be paid in the same manner. If any judge, after having been notified by the warden, shall neglect to cause such order to be made, as herein provided, or any such sheriff shall neglect to remove such insane convict, as required by the provisions of this section, it shall be the duty of the warden to cause such insane convict to be removed before a superior court of a county in which the state prison is located, in charge of an officer of the prison, or other suitable person, for the purpose of examination; and the cost of such removal shall be paid out of the State treasury, in the same manner as when removed by the sheriff, as herein provided.

Labor of prisoners.

Sec. 20. The State board of prison directors shall require of every able-bodied convict confined in a State prison as many hours of faithful labor

in each and every day during his term of imprisonment as shall be prescribed by the rules and regulations of the prison. Every convict who shall have no infraction of the rules and regulations of the prison or laws of the State recorded against him, and who performs in a faithful, orderly, and peaceable manner the duties assigned to him, shall be allowed from his term, instead and in lieu of the credits heretofore allowed by law, a deduction of two months in each of the first two years, four months in each of the next two years, and five months in each of the remaining years of said term, and pro rata for any part of a year, where the sentence is for or more or less than a year. The mode of reckoning credits shall be as shown in the following table:—

No. of years of Sentence.	Good Time Granted.	Total Good Time Made.	Time to be Served if Full Time is Made.
First year ...	2 months...	2 months.....	 10 months
Second year ..	2 months...	4 months.....	 1 year and 8 months
Third year ...	4 months...	8 months.....	 2 years and 4 months
Fourth year ..	4 months...	1 year.....	 3 years
Fifth year	5 months...	1 year and 5 months.	 3 years and 7 months
Sixth year	5 months...	1 year and 10 months.	 4 years and 2 months
Seventh year ..	5 months...	2 years and 3 months.	 4 years and 9 months
Eighth year ...	5 months...	2 years and 8 months.	 5 years and 4 months
Ninth year	5 months...	3 years and 1 month..	 5 years and 11 months
Tenth year ...	5 months....	3 years and 6 months.	 6 years and 5 months

And so on, through as many years as may be the term of the sentence. Each convict shall be held entitled to these deductions, unless the board of directors shall find that for misconduct or other cause he should not receive them. But if any convict shall commit any assault upon his keeper, or any foreman, officer, convict, or person, or otherwise endanger life, or shall be guilty of any flagrant disregard of the rules of the prison, or commit any misdemeanor, or in any manner violate any of the rules and regulations of the prison, he shall forfeit all deductions of time earned by him for good conduct before the commission of such offense, or that, under this section, he may earn in the future, or shall forfeit such part of such deductions as to the board of directors may seem just; such forfeiture, however, shall be made only by the board of directors after due proof of the offense and notice to the offender; nor shall any forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the directors shall be the sole judges. The board shall have power to restore credits forfeited, for such reasons as by them may seem proper.

United States criminals.

Sec. 21. All criminals sentenced to the State prisons by the authority of the United States shall be received and kept according to the sentence of the court by which they were tried, and the prisoners so confined shall be subject in all respects and discipline and treatment as though committed under the laws of this State. The wardens are hereby authorized to charge and receive from the United States, for the use of the State, an amount sufficient for the support of each prisoner, the cost of all clothing that may be furnished, and one dollar per month for the use of the prisoner. No other or further charge shall be made by any officer for or on account of such prisoners.

Gas and water.

Sec. 22. The board of directors shall have power to contract for the supply of gas and water for said (prisons), upon such terms as said board shall deem to be for the best interests of the State, or to manufacture gas, or furnish water themselves, at their option. They shall also have power to erect and construct, or cause to be erected and constructed, electrical apparatus or other illuminating works in their discretion, with or without contracting therefor, on such terms as they may deem just. The board shall have full power to erect any building or structure deemed necessary by them, or to alter or improve the same, and to pay for the same from the fund appropriated for the use or support of the prisons, or from the earnings thereof, without advertising or contracting therefor; provided, that no building or structure, the cost of which will exceed five thousand dollars, shall be erected or constructed without first obtaining the consent of the governor, secretary, and treasurer of the State, or a majority thereof. The board shall have power to give for meritorious service to any convict discharged, or about to be discharged, a sum in addition to that already allowed not exceeding ten dollars.

No other compensation than that allowed by directors.

Sec. 23. No officer or employee shall receive, directly or indirectly, any compensation for his services other than that prescribed by the directors; nor shall he receive any compensation whatever, directly or indirectly, for any act or service which he may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of the provisions of this section, the officer, agent, or employee of the State shall be discharged from his office or service; and every contractor, or employee, or agent of a contractor engaged therein, shall be expelled from the pris-

on grounds, and not again permitted within the same as a contractor, agent, or employee.

Not to make presents to convicts without permission.

Sec. 24. No officer or employee of the State, or contractor, or employee of a contractor, shall, without permission of the board of directors, make any gift or present to a convict, or receive any from a convict, or have any barter or dealings with a prisoner. For every violation of the provisions of this section, the party engaged therein shall incur the same penalty as prescribed in section twenty-three.

Not to be interested in contracts, etc.

Sec. 25. No officer or employee of the prison shall be interested, directly or indirectly, in any contract or purchase made or authorized to be made by any one for or on behalf of the prisons.

Annual reports.

Sec. 26. There shall be printed annually for the use of the prisons five hundred copies of the annual report of the board of directors, and the clerk shall annually transmit to each of the State prisons in the United States one copy of such report.

Bonds.

Sec. 27. All the bonds of officers and employees under this act shall be deposited with the secretary of state.

Shops destroyed by fire may be rebuilt.

Sec. 28. If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the board of directors, by and with the advice and consent of the governor, attorney-general, and secretary of state, and the expenses thereof paid out of any funds in the State treasury not otherwise appropriated by law.

Report to governor.

Sec. 29. The board of directors must report to the governor from time to time the names of any and all persons confined in the State prisons who, in their judgment, ought to be pardoned out and set at liberty on account of good conduct, or unusual term of sentence, or any other cause which in their opinion, should entitle the prisoner to pardon.

Sec. 30. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 31. This act shall take effect immediately.

The original of this act to regulate and govern the State's prisons of California can be found in Statutes of 1880, p. 67 (Bancroft's ed., p. 243).

An Act to provide for the erection and maintenance of a branch State prison near the town of Folsom.

[Approved March 30, 1874; 1873-4, 785.]

Branch State prison.

Section 1. The governor, lieutenant-governor, and secretary of state, the board of State prison directors, are hereby authorized and empowered, and it shall be their duty, to cause to be commenced, on or before the first day of October, A. D. eighteen hundred and seventy-four, the building of a branch State prison, on the land and at the site conveyed to the State by the Natoma Water and Mining Company, situated near the town of Folsom, in Sacramento County; also, to commence building and constructing an exterior wall, inclosing not less than five acres of land, around the same.

Materials and construction.

Sec. 2. The walls of the entire prison structure shall be erected with stone to be taken from the granite quarries situated on the land mentioned in section one of this act, using convict labor in and about the premises whenever it can be done to advantage; and the said prison structure shall be erected, finished, and completed as speedily after it is commenced as practicable; provided, that said board of State prison directors shall first order the erection of a suitable structure for the accommodation of not less than one hundred and fifty convicts within the inclosed prison-yard, the same to be in harmony with the general plan adopted for the construction of the branch prison at Folsom.

Plans and specifications.

Sec. 3. The said board of directors shall, on or before the fifteenth day of April, A. D. eighteen hundred and seventy-four, cause to be published in a daily newspaper in the city and county of Sacramento, and city and county of San Francisco, for at least thirty days, a notice to receive plans and specifications, in detail, at a place specified therein, for the construction of a branch State prison, to be erected on the land and at the site hereinbefore mentioned in said Sacramento County, and upon the basis of accommodating not less than five hundred prisoners at one time. The notice shall also state the premium, not to exceed the sum of five hundred dollars, to be awarded to the architect whose plans and specifications for the same may be adopted.

Proposals, bids, contracts.

Sec. 4. The said board of State prison directors, on or before the fifteenth day of June, A. D. eighteen hundred and seventy-four, shall adopt plans and specifications for said branch State prison, as aforesaid; and on or before the day last before mentioned, shall cause to be advertised in

a daily newspaper published in the city and county of Sacramento, and in the city and county of San Francisco, for at least thirty days, a notice to receive sealed proposals and bids to construct and erect any part of said branch State prison, on the land and at the site aforesaid, in accordance with the plans and specifications which shall have been heretofore adopted by said board of State prison directors for the construction of the same, with the reserved right to reject any and all bids as being too high in price, and advertise anew. The said board of directors, on or before the fifteenth day of September, A. D. eighteen hundred and seventy-four, must let to the lowest responsible bidder the contract to construct and erect such part of said prison structure as the said board of directors, in their discretion, may think proper, upon condition that such contractor or contractors execute a good and sufficient bond, in double the amount of his or their bids, to perform such contract of constructing and erecting any part of said prison structure in a skillful and workman-like manner, and in conformity with the plans and specifications aforesaid, which bond shall be approved by the board of State prison directors. Superintendent.

Sec. 5. The board of State prison directors are hereby authorized to appoint a superintendent of said prison, who shall hold his office during the pleasure of the appointing power, and until his successor is appointed and qualified, whose duty it shall be to superintend and manage the construction and erection of said prison structure, under such rules and regulations as may be prescribed by the board of State prison directors, under the provisions of this act.

Temporary structures.

Sec. 6. The board of State prison directors are hereby authorized to cause to be erected, on said site mentioned in section one of this act, such

temporary prison buildings, yard, and officers' quarters as they may deem necessary for the accommodation of the officers and guards, and the safe-keeping of the prisoners during the time they are employed in the erection of the said permanent prison buildings and wall, or prison structure.

Removal of prisoners.

Sec. 7. As soon as temporary quarters and buildings are erected, as provided in section six of this act, the board of State prison directors shall select a number of prisoners, not less than fifty nor more than five hundred, of the number who may be unemployed under contract, and cause them to be removed from the State prison at San Quentin to said prison near Folsom, and there to be confined and worked in the erection of said prison structure, and such other work and labor as the said board of directors shall deem advantageous and proper, during the term or terms of their sentence to the State prison.

Code.

Sec. 8. The provisions of chapters one and two, of title I., part III., of the Penal Code, are applicable to and made part hereof, substituting the words "branch State prison" for the words "State prison," whenever occurring in said chapters. The appointment of a prison warden shall be a permanent appointment, and he shall not be removed from office except for good and sufficient cause.

Supply contracts.

Sec. 9. All material necessary to be purchased in the construction of said prison structure, and all supplies for the support and maintenance of said branch State prison, shall be by contract, and the board of directors shall cause to be published, in a newspaper published in the county, a notice to receive bids therefor, and let the same to the

lowest responsible bidder, whenever such material or supplies are needed.

Construction accounts, etc.

Sec. 10. All salaries paid to officers, guards, or skilled laborers, and all moneys expended for material, tools, or supplies, used in the construction of said branch State prison buildings and wall, and in the support and maintenance of said prison, shall be drawn from the State treasury, in the same manner as moneys are now drawn therefrom for the support and maintenance of the State prison at San Quentin; and the board of directors shall cause to be kept a correct account, in detail, of all moneys secured and disbursed by them in the building, support, and management of said branch State prison, and shall on or before the first day of November in each year, make a full report to the governor, showing in detail all the transactions connected with the construction, management, support, and maintenance of said prison, and of the working and conducting of the convicts therein confined.

Moneys for work.

Sec. 11. The board of directors shall collect, or cause to be collected, and receive all moneys due for work and labor furnished to any parties at or from said prison, or from the lease of the labor of convicts therein confined, and pay the same into the State treasury, and take the treasurer's receipt therefor; and it shall be the duty of the State treasurer to place the same in a fund, to be known as the "Folsom branch State prison fund," which, together with all moneys appropriated or obtained by the assessment and levy of taxes upon the value of property for the building, support, and maintenance of said prison, shall be subject to orders of said board of directors, to be disbursed in the support of said branch State prison.

Appropriation.

Sec. 12. The sum of one hundred and seventy-

five thousand dollars is hereby appropriated out of any moneys in the State treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act, and the State treasurer is hereby directed and required to place the same in the Folsom branch State prison fund, subject to orders for disbursement as hereinbefore provided. Neither the board of State prison directors mentioned in section one of this act, nor any one acting under or for said board, shall incur or create any debt or debts, liability or liabilities, under the provisions of this act; nor shall they make any contract or agreement in relation to the building and construction of the branch State prison provided for in this act, the completion and fulfillment of which will exceed the appropriation made in this section, or the balance of such appropriation unexpended at the time such contract or agreement is entered into. Any violation of the foregoing provisions shall be a misdemeanor, and all such contracts and agreements shall be void.

Sec. 13. All acts and parts of acts, so far as the same are in conflict with the provisions of this act, are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its passage and approval.

In addition to the above legislation, the following acts may be referred to:

An act to provide for the completion of the branch State prison at Folsom, approved April 1. 1878; 1877-8, 884.

An act to provide for the speedy completion of the branch State prison at Folsom, approved April 12, 1880; 1880, 39 (Ban. ed. 191).

An act to provide for the erection of a wall at the State prison at Folsom, approved March 13, 1883; 1883, 295.

An act to appropriate the sum of thirty-four thousand four hundred and nineteen dollars and

forty cents, to pay the amount found by the sixth judicial court to be due M. Miles and his sureties, for work done under contract, in building the State prison at Folsom, approved March 10, 1885; 1885, 79.

An Act providing for the erection and operation of rock-crushing plants at the State prisons, for the preparation of highway material for the benefit of the people of the State, and providing for the necessary advances and appropriation of money to carry out said work.

Section 1. The governor of the State, the State prison directors, and the bureau of highways (or if the latter shall not be established, then and in that case the two first named) shall when satisfied that fifty thousand cubic yards of prepared road or highway metal, as hereinafter described, will be taken for highway purposes, purchase, establish, and operate at one or both of the State prisons, a rock or stone crushing plant, to be operated by convict labor and by the application of power under control of the State prison directors, and with such free labor as is necessary for superintendence and direction, to crush rock or stone into road metal for highway purposes, of different and necessary degrees of fineness; provided, that the authority and direction hereby and herein conferred and given, shall not be exercised or employed until the governor and the State prison directors are satisfied that transportation can be had for such highway metal for highway purposes at just and reasonable rates, and so as to justify the setting up and operation herein provided for of said plant.

Sec. 2. When such plant described in section one is set up and operated there shall be taken into account in ascertaining the cost of producing

highway metal therefrom, only the cost of necessary explosives, oil, fuel, tools, and machinery exclusive of the plant itself, repairs, superintendence, and direction, and the preparation and maintenance of beds, boxes, crates, or other unloading devices for carriage and delivery from cars of said highway metal.

Sec. 3. To said cost of production so ascertained, as set out in section two, there shall be added for and to each and every cubic yard of highway metal so produced, ten per cent, and the result or product of such addition shall be the sale price of such metal delivered from the plant free on board of the cars or other vehicles of transportation.

Sec. 4. Said ten per cent shall, as realized, and not less frequently than semi-annually, be paid into the State treasury, until there shall have been paid in the full sum of twenty-five thousand dollars, and thereafter said percentage shall be reduced to five per cent, and the same as realized, shall be paid into the fund for the support of the State prisons.

Sec. 5. The State prison directors are hereby authorized to lease railroad cars with equipment suitable for the rapid and economical handling and delivery of highway material prepared as aforesaid, whenever in their judgment the interests of the people of the State will be conserved thereby in the matter of highway construction by the use of such highway metal so produced, as in this act provided. The cost of such leasing shall in such case be carried into the cost of production described in section two.

Sec. 6. The sum of thirty thousand dollars is hereby advanced by the State, for the purposes of this act, and said sum is hereby appropriated out of the general fund of the treasury, subject to the demand of the State prison directors; and the State controller shall, on presentation of such

demand, in writing, draw his warrant upon the treasurer for the said sum of money in behalf of said State prison directors, and the State treasurer shall on presentation of such warrant, pay the same. Twenty-five thousand dollars of said sum of money so advanced and appropriated shall be returned to the fund from which drawn, as is specified and directed in this act.

Sec. 7. The sum of five thousand dollars is hereby set apart out of the money so appropriated in the previous section, to and for the usage of the State prison directors, to provide and maintain a permanent revolving fund for the purchase of tools, machinery, and other material and appliances, exclusive of the establishment of the plant described in this act, to be used in the process of crushing and handling rock or stone at the State prisons for the purposes contemplated and set out in this act. All money taken from said revolving fund shall be used exclusively in payment for such supplemental machinery, tools, material, and appliances necessary to the proper quarrying, handling, and preparing of highway material at said State prisons; and so much of the money received for sale of highway metal as shall be necessary to that end shall be returned to said revolving fund as is needed to keep the same constantly at the said figure of five thousand dollars.

Sec. 8. All acts or parts of acts in conflict with the provisions of this act are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its passage. [Approved March 28, 1895; Stats. 1895, p. 274.]

An Act to regulate and govern the operation of the rockcrushing plant at the State Prison at Folsom, to provide for the sale of crushed rock, and the disposition of the revenues derived therefrom.

Section 1. The State Board of Prison Directors shall regulate, govern, and have full control of the rock or stone-crushing plant established at the State Prison at Folsom, the product thereof, the revenues derived therefrom, and all appropriations of money therefor.

Sec. 2. The plant shall be operated by convict labor, and by the application of the mechanical and water power belonging to the State Prison at Folsom, together with such free labor as the State Board of Prison Directors may deem necessary for superintending, directing, and guarding the convicts employed thereon.

Sec. 3. The State Board of Prison Directors are hereby empowered and authorized to sell and to otherwise dispose of the crushed-rock product of the said plant; provided, that in all cases, preference shall be given to orders received from the Bureau of Highways for crushed rock for road metal for highway purposes.

Sec. 4. The sale price of all crushed rock sold for road metal for highway purposes shall be the cost of production, with ten per centum added, delivered on board cars or other vehicles of transportation at the rock-crushing plant; provided, that no rock shall be sold for highway or other purposes for a less price than thirty cents per ton.

Sec. 5. The cost of production shall be ascertained by estimating the cost of explosives, oil, fuel, tools, repairs, free labor, supplementary machinery, the preparation and maintenance of

beds, boxes, crates, or other unloading devices for carriage to and delivery from cars, of said crushed rock, the leasing of railroad cars, and the cost of such other materials, supplies, and expenses as may be required and used in producing each ton of crushed rock ready for sale delivery.

Sec. 6. The State Board of Prison Directors are hereby authorized to lease railroad cars, with equipments suitable for the rapid and economical handling and delivery of crushed rock, prepared as aforesaid, whenever in their judgment the interest of the people of the State will be conserved thereby, in the matter of highway construction, by the use of said crushed rock. The cost of said leasing shall be carried into the cost of production described in section five.

Sec. 7. The amount of five thousand dollars heretofore appropriated is hereby set apart to and for the usage of the State Board of Prison Directors, to provide and maintain a permanent revolving fund for the purpose of operating and maintaining the rockcrushing plant at Folsom Prison. The money taken from said revolving fund shall be used exclusively for operating and maintaining the said rock-crushing plant. So much of the money received from the sale of crushed rock as shall be necessary to that end, shall be returned to said revolving fund, as it is needed to keep the same constantly at the said figure of five thousand dollars.

Sec. 8. Whenever the revolving fund shall be replenished, and there shall be a surplus, or balance, over the amount appropriated, this surplus, or balance, shall be paid, not less frequently than semi-annually, into the State Treasury, to the credit of the fund known as "The State Prison Fund of Folsom Prison," for the use and support of Folsom Prison.

Sec. 9. The clerk of the State Prison at Folsom shall keep such records, books, and accounts as

may be necessary to at all times clearly exhibit the financial, business, and other transactions of the said rock-crushing plant. All such records, books, and accounts shall be kept separate and distinct from those relating to other prison affairs.

Sec. 10. For all sums of money herein required to be paid, drafts shall be drawn on the Controller of State, signed by at least three members of the State Board of Prison Directors. Said drafts shall be sent to the State Board of Examiners, to be by them approved, and after approval by said State Board of Examiners, the Controller of State shall draw his warrant in behalf of said State Board of Prison Directors, on the State Treasurer, who shall pay the same, on presentation of such warrant; provided, that the State Board of Examiners is hereby expressly prohibited from approving of any of said drafts until the same are presented with itemized statements, showing specifically the services rendered, by whom performed, time employed, distance traveled, and necessary expenses thereof; if for articles purchased, the said statement shall give the name of each article, together with the price paid for each, and of whom purchased, together with the date of purchase.

Sec. 11. If any of the buildings, machinery, or structures appertaining to or comprising the said rock-crushing plant are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately, under the direction of the State Board of Prison Directors, by and with the consent solely of the Governor, the Attorney-General, and the Secretary of State, and the expenses thereof, not to exceed in amount the sum of ten thousand dollars, shall be paid out of any funds in the state treasury not otherwise appropriated by law, and the provisions of no other

act shall apply to or govern or limit this section, or any of the powers or duties herein conferred.

Sec. 12. The State Board of Prison Directors are hereby authorized and empowered to perform such other acts and duties as may be necessary to carry out the full intent and meaning of this act.

Sec. 13. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Sec. 14. This act shall take effect immediately.
[Approved March 11, 1897.]

An act to provide for certain improvements and repairs at the Folsom State prison, and making an appropriation therefor.

Section 1. There is hereby appropriated out of any money in the State treasury not otherwise appropriated, the sum of sixty-five thousand dollars, to be paid to the State Board of Prison Directors, and to be expended by them at the Folsom State Prison, for the following improvements, viz: For cell room for three hundred convicts in the new wing of the prison building; for convicts' dining-room and kitchen, and the necessary ranges, ovens, etc., for the same; for officers' and guards' dining-room and kitchen, additional quarters for the officers and guards, and the necessary furnishing of the same; for completing the State powerhouse in accordance with the plans adopted, and purchasing turning lathes and such machinery as is needed for prison work.

Sec. 2. The Controller of State is hereby directed to draw his warrant in favor of the said State Board of Prison Directors for the amount appropriated by section one of this act, and the State Treasurer is hereby directed to pay the same out of said appropriation.

Sec. 3. All bills of materials for such improvements and repairs shall be first audited by the board of directors and approved by the State Board of Examiners before being paid.

Sec. 4. The consent of no other board will be required before making such improvements and repairs.

Sec. 5. This act shall take effect and be in force from and after its passage. [Approved April 6, 1891; Stats 1891, p. 487.]

An act making appropriation for the purchase of an electric plant, pump and pipe, sewer pipe, necessary wheels for utilizing the water of the American river for power purposes, and the erection of a power building for the State prison at Folsom, and other expenses incidental and relating thereto.

Utilizing the American River for power purposes at Folsom State prison.

Section 1. The sum of one hundred and twelve thousand five hundred dollars (\$112,500) is hereby appropriated out of any money in the State treasury not otherwise appropriated, to be paid to the State board of prison directors, and to be expended for the objects hereinafter specified: For the purchase of necessary material for the construction of a fire-proof power-house, to utilize the waters of the American river for power purposes at the State prison at Folsom; the necessary wheels and machinery for same; pumping machinery and pipe necessary to supply the prison with water for all purposes; an electric plant for supplying light and power, with necessary motors and dynamos; sufficient iron-stone pipe for necessary sewers; and other expenses immediately appertaining to the carrying out of this act. And the State Controller is hereby ordered and di-

rected to draw the necessary warrants therefor, and the State Treasurer is hereby directed to pay the same.

Publication of contracts.

Sec. 2. No contract for lumber, iron, machinery, or material to be used for the purposes mentioned in section one of this act shall be entered into by the directors until publication shall be made in at least three (3) daily newspapers, two (2) of said newspapers to be published in the city of San Francisco, and one in the city of Sacramento, for at least twenty (20) days prior thereto, inviting bids for the supply of such material. Such bids, made in the form of sealed proposals, shall be opened at a public meeting of the directors, and the contract shall be awarded to the lowest responsible bidder for the supplying of such material.

Auditing of bills.

Sec. 3. All bills for material and machinery shall be audited by the board of prison directors, and approved by the State Board of Examiners before being paid.

Directors of prison to sanction all plans, specifications, etc.

Sec. 4. All plans, descriptions, bills of materials, specifications, and estimates requisite, necessary, proper, or convenient for any of the purposes aforesaid, shall receive the sanction of a majority of the State Board of Prison Directors, who shall cause an entry to be made in their minutes that such plans, descriptions, bills of materials, specifications, and estimates have been approved. It shall not be necessary to obtain the approval or sanction of any other board, officer, or person to said plans.

Sec. 5. All acts and parts of acts in conflict with this act are hereby repealed.

Sec. 6. This act shall take effect immediately
[Approved March 11, 1889; 1889, 132.]

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An act making appropriations for the purchase of jute, jute machinery, lands, and erection of buildings for the manufacture of jute for the State prison at San Quentin, and other expenses incidental and relating thereto.

Appropriations for State prison at San Quentin.

Section 1. The sum of two hundred and nineteen thousand dollars (\$219,000) is hereby appropriated out of any money in the State treasury not otherwise appropriated, to be paid to the State Board of Prison Directors, to pay for the purchase of jute, jute machinery, lands, and erection of buildings for the manufacture of jute, and other expenses immediately appertaining to the carrying out of the object of this act, for the State prison at San Quentin.

Sec. 2. The Controller of State is hereby authorized and directed to draw his warrant upon the State Treasurer in favor of said prison directors for said sum, and the State Treasurer is hereby directed to pay the same when presented.

Sec. 3. This act shall take effect immediately. [Approved March 4, 1881; 1881, 34.]

An act amending an act making appropriation for the establishment of a permanent fund for the purchase of jute to be manufactured at the State prison at San Quentin, approved March 9, 1885.

Appropriation for purchase of jute for State prisons.

Section 1. The sum of one hundred thousand dollars is hereby appropriated out of any money

in the State treasury not otherwise appropriated, to provide and maintain a permanent revolving fund for the purchase of jute for the State prisons. All moneys taken therefrom to be used exclusively in payment for jute, to be used in manufacturing in said State prisons; and so much of the money received from the sale of any goods manufactured from said jute shall be returned to the said revolving fund, so that the fund shall contain one hundred thousand dollars before any of the proceeds from the sale of said manufactured goods are used for any other purpose than the purchase of jute.

Sec. 2. This act shall take effect immediately. [Approved March 16, 1889; 1889, 228.]

An act making appropriations for the purchase of additional jute machinery and the erection of additional buildings for the manufacture of jute goods for the State prison at San Quentin, and other expenses incidental and relating thereto.

Appropriation for purchase of jute machinery, etc.

Section 1. The sum of one hundred and sixty thousand dollars is hereby appropriated out of any money in the State treasury not otherwise appropriated, to be paid to the State Board of Prison Directors, to pay for the purchase of additional jute machinery, and the erection of buildings for the manufacture of jute goods, and other expenses immediately appertaining to the carrying out of the object of this act, for the State prison at San Quentin; and the State Controller is hereby ordered and directed to draw the necessary warrants therefor, and the State Treasurer is hereby directed to pay the same.

Sec. 2. This act shall take effect immediately. [Approved March 24, 1887; 1887, 240.]

An act to provide for the erection at San Quentin State prison a building for the accommodation of the insane prisoners, and making an appropriation therefor.

[Approved March 19, 1889; 1889, 419.]

The act appropriated twenty thousand dollars for the purpose indicated.

An act to provide for certain improvements and repairs at the San Quentin State prison, and making an appropriation therefor.

[Approved March 19, 1889; 1889, 420.]

The act appropriated fifteen thousand dollars for the purpose indicated.

An act to purchase adjacent lands at San Quentin for the use of the State prison, together with the improvements thereon, and making an appropriation therefor.

Purchase of lands for state prison at San Quentin.

Section 1. There is hereby appropriated out of any money in the State treasury not otherwise appropriated, the sum of seven thousand seven hundred dollars, to be paid to the Board of State Prison Directors, and to be expended by them at the San Quentin State prison, as follows, viz: Purchase of land to straighten boundary line, so as to include all of the reservoirs, five hundred dollars; right of way to change county road, one thousand dollars; purchase of ninety-five acres of tide-lands, owned by W. T. Coleman, two thousand five hundred dollars; purchase of two acres

of tide-land and houses, now owned by Sophie H. Edwards and Miss Edwards, two thousand dollars; purchase of houses, now on State lands,—John Mann, four hundred dollars; Henry Schlosser, three hundred dollars; Mrs. Mary Jones (two) five hundred dollars; Mrs. Saultry, three hundred dollars; D. Sutherland, one hundred dollars; W. O'Grady, one hundred dollars. Total, one thousand seven hundred dollars.

Sec. 2. The Controller is hereby directed to draw his warrant in favor of said board of trustees for the amount appropriated by section one of this act, and the Treasurer is hereby directed to pay the same, payable as provided for by said section one.

Sec. 3. This act shall take effect and be in force from and after its passage. [Approved March 19, 1889; 1889, 419.]

An act appropriating money for building workshops and prison-buildings at the California State prison, at San Quentin.

[Approved March 31, 1876; 1875-6, 643.]

This act appropriated two hundred thousand dollars for the construction of a large fire-proof work-shop, four hundred feet by sixty feet, and four stories high; also for the purchase of State machinery, shafting, water-pipes, and hose. It provided that bids for sealed proposals to furnish the necessary materials should be published in two daily newspapers in San Francisco for at least ten days. For references to other acts relative to the State prison, see Statutes in Force, tit. "Marin County."

An act to appropriate the sum of three thousand one hundred dollars to purchase adjacent lands at San Quentin for the use of the State prison, together with the improvements thereon.

Section 1. There is hereby appropriated out of any money in the State treasury not otherwise appropriated, the sum of three thousand one hundred dollars, to be paid to the Board of the State Prison Directors, and to be expended by them as follows, viz: To purchase the property of John Mann at the sum of six hundred dollars; James Cronogue, at five hundred dollars; Mrs. Sophie H. Edwards, fifteen hundred dollars; Henry Schlosser, five hundred dollars.

Sec. 2. The Controller of State is hereby authorized and directed to draw his warrant upon the State treasury for the said sum of three thousand one hundred dollars, payable to the Board of State Prison Directors, and the Treasurer of said State is hereby directed to pay the same.

Sec. 3. The payments herein mentioned are to be paid as additional sums to those mentioned in "An act to purchase adjacent lands at San Quentin for the use of the State prison, together with the improvements thereon, and making an appropriation therefor," approved March nineteenth eighteen hundred and eighty-nine.

Sec. 4. This act shall take effect immediately. [Approved March 31, 1891; Stats. 1891, p. 261.]

An act to authorize the State prison directors of the State of California to employ any unemployed prisoners to construct roads to the State prison at San Quentin.

Article 1. The State prison directors of the State of California are hereby authorized, during

the two years next succeeding the passage of this act, to employ any unemployed prisoners in the construction of one or more public roads from the San Quentin State prison to Point Tiburon, in Marin County.

Sec. 2. This act shall take effect immediately. [Approved March 31, 1891; Stats. 1891, p. 222.]

An act directing the State prison Directors of the State of California to employ at least twenty prisoners in the construction of roads to the State Prison at San Quentin.

Section 1. The State Prison Directors of the State of California are hereby authorized and directed, during the four years next succeeding the passage of this act, to employ at least twenty prisoners daily, during fair weather, in the construction and repair of such public roads as have been, or shall hereafter be, laid out or opened by the Board of Supervisors of Marin county, and which extend from the San Quentin State prison, or the grounds surrounding the same, to Point Tiburon and all railroad stations in Marin county which lie in the neighborhood of the said State prison.

Sec. 2. This act shall take effect and be in force from and after its passage. [Approved February 10, 1897.]

An act similar in terms to this was passed in 1893; Stats. 1893, p. 141.

An act to protect the public health, to prevent the introduction and spreading of disease, and to provide for the protection of the health of criminals under sentence on conviction of a misdemeanor.

Hair-cutting for sanitary purposes.

Section 1. Whenever the board of health of any

city or county, or city and county, or the board of supervisors of any county, or the county physician of any county of this State, shall present or cause to be presented to the Sheriff, or other officer having charge of any county jail or prison in any county or city, or city and county, in this State, a certificate, or order, in writing, to the effect that it is by them, or him, considered necessary for the purpose of protecting the public health, or to prevent the introduction or spreading of disease, or to protect or improve the health of criminals under sentence, that the hair of any criminal or criminals should be cut, the said Sheriff, or other officer, shall cut, or cause to be cut, the hair of any such person or persons in his charge convicted of a misdemeanor and sentenced to a longer term of imprisonment than fifteen days, to a uniform length of one and one half inches from the scalp of such person or persons so imprisoned.

Sec. 2. This act shall take effect from and after its passage. [Approved March 13, 1883; 1883, 280.]

An act concerning the payment of the expenses and costs of the trial of convicts for crimes committed in the State prison, and to pay the costs of the trial of escaped convicts, and to pay for the expenses of coroner inquests in said prison.

Costs and expenses of trials of convicts for crimes committed in State prison.

Section 1. The costs and expenses of all trials which have heretofore been had in the county in this State where the State prison is situated, for any crime committed by any convict in the State prison, and the costs of guarding and keeping such convict, and the execution of the sentence of

said convict by said county, and the costs and expenses of all trials heretofore had for the escape of any convict from the State prison, and the costs and expenses of all coroner inquests heretofore had of any convict at the state prison, by the county where said prison has been situated, shall be certified to by the county clerk of said county wherein said trials and inquests have been held to the Board of State Prison Directors for their approval, and after such approval they shall pay the same out of the money appropriated for the support of the State prison to the county treasurer of said county where said trials have been had; "provided, that this act shall not apply to any costs or expenses incurred since January first, eighteen hundred and seventy-three."

Sec. 2. This act shall only apply to cases which have not been settled for by the State.

Sec. 3. This act shall take effect immediately. [Approved April 12, 1880; 1880, 43 (Ban. ed. 204.)]

An act to authorize the State Board of Prison Directors to pay for certain skilled labor used in the construction of the dam and canal at Folsom prison, and making an appropriation therefor.

Section 1. There is hereby appropriated out of any money in the State treasury not otherwise appropriated, the sum of sixteen thousand nine hundred and twenty-five dollars, to be paid to the State Board of Prison Directors, and to be expended by them in payment of certain skilled labor which has been furnished and paid for by the Folsom Water Power Company, and used in the construction of the dam and canal at the Folsom State prison.

Sec. 2. The Controller of State is hereby directed to draw his warrant in favor of the State

Board of Prison Directors for the amount appropriated by section one of this act, and the State Treasurer is hereby directed to pay the same out of said appropriation.

Sec. 3. Before ordering said claim paid the State Board of Prison Directors shall require the Folsom Water Power Company to file an itemized account of all such skilled free labor furnished and used upon the said dam and canal, with vouchers showing the amounts so paid, and also a release of any and all claims against the State of California, for labor so furnished.

Sec. 4. This act shall take effect and be in force from and after its passage. [Approved April 6, 1891; Stats. 1891, p. 496.]

An act to establish board of parole commissioners for the parole of and government of paroled prisoners.

Section 1. The State Board of Prison Directors of this State shall have power to establish rules and regulations under which any prisoner who is now or hereafter may be imprisoned under a sentence other than for murder in the first or second degree, who may have served one calendar year of the term for which he was convicted, and who has not previously been convicted of a felony and served a term in a penal institution, may be allowed to go upon parole, outside of the buildings and inclosures, but to remain while on parole in the legal custody and under the control of said Board of State Prison Directors, and subject at any time to be taken back within the inclosure of said prison; and full power to make and enforce such rules and regulations, and to retake and imprison any convict so upon parole, is hereby conferred upon said board of directors, whose written order, certified by the president of said board,

shall be a sufficient warrant for all officers named therein to authorize such officer to return to actual custody and conditionally released or paroled prisoner; and it is hereby made the duty of all chiefs of police and marshals of cities and villages, and the sheriffs of counties, and of all police, prison, and peace officers and constables, to execute any such order in like manner as ordinary criminal process. If any prisoner so paroled shall leave the State without permission from said board, he shall be held as an escaped prisoner, and arrested as such.

Sec. 2. This act shall take effect immediately. [Approved March 23, 1893; Stats. 1893, p. 183.]

SUNDAYS.

An act to provide for a day of rest from labor.

Section 1. Every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven; and it shall be unlawful for any employer of labor to cause his employees, or any of them to work more than six days in seven; provided, however, that the provisions of this section shall not apply to any case of emergency.

Sec. 2. For the purposes of this act, the term day's rest shall mean and apply to all cases, whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

Sec. 3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor.

Sec. 4. This act shall take effect and be in force thirty days from and after its passage. [Approved February 27, 1893; Stats. 1893, p. 54.]

An act to regulate and provide for a day of rest in certain cases.

Section 1. It shall be unlawful for any person engaged in the business of baking to engage, or permit others in his employ to engage in the labor of baking, for the purpose of sale, between the hours of six o'clock P. M. on Saturday and six o'clock P. M. on Sunday, except in the setting of sponge preparatory to the night's work; provided however, that restaurants, hotels, and boarding houses may do such baking as is necessary for their own consumption.

Sec. 2. Any person violating the provisions of this act shall be guilty of a misdemeanor, and shall be punishable by imprisonment in the county jail not less than one month nor more than six months, or by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by both fine and imprisonment. [In effect April 16, 1880; Stats. 1880, p. 80, Ban. ed. 311.]

This act was declared unconstitutional: *Ex parte Westerfield*, 55 Cal. 550.

SUPERVISORS.

An act to authorize boards of supervisors to pay the expenses of posse comitatus in criminal cases.

[Approved April 16, 1880; 1880, 120 (Ban. ed. 341).]

Expenses of posse comitatus.

Section 1. The board of supervisors of any county may allow, in their discretion, such compensation as they may deem just, to defray the necessary expenses that have been incurred by a posse comitatus in criminal cases; provided, no claim shall be allowed for expenses which have not been incurred within one year before such allowance.

Sec. 2. This act shall take effect and be in force from and after its passage.

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